

## **Edmonton Composite Assessment Review Board (CARB)**

**Citation: Michele Warwa-Handel, APTAS v The City of Edmonton, 2013 ECARB 00883**

**Assessment Roll Number:** 6229207

**Municipal Address:** 11323 124 Avenue NW

**Assessment Year:** 2013

**Assessment Type:** Annual New

Between:

**612376 Alberta Ltd. Represented by Michele Warwa-Handel, APTAS**

Complainant

and

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

Respondent

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**DECISION OF**  
**James Fleming, Presiding Officer**  
**John Braim, Board Member**  
**Mary Sheldon, Board Member**

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### **Procedural Matters**

[1] There was no objection to the composition of the panel. No bias was declared by members of the panel in this matter.

### **Preliminary Matters**

[2] There were no preliminary matters.

### **Background**

[3] The property is a parcel of undeveloped vacant land situated on the north west corner of the Municipal Airport, though not within the Airport lands. The site does not have storm sewers or street lights. The property is 3.7 acres in size and used for equipment storage. The zoning is MA 2 - Municipal Airport Business Industrial, and the property was valued on the Direct Sales Comparison Method and has a 2013 assessment of **\$1,557,500**.

### **Issue(s)**

[4] Has the value of the subject property been adversely affected for the 2013 tax year by any of the activities being carried out on adjacent lands?

[5] If the value has been adversely impacted by any of the activities being carried out on adjacent lands, what is the best evidence of value for the subject?

### **Legislation**

[6] 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**

[7] The Complainant argued that the value of the subject property has been affected by a number of the activities happening at the airport. Many of these activities relate to the impending permanent closure of the airport and the redevelopment of the lands for predominantly residential uses. In addition, and further complicating matters, in the opinion of the Complainant, is the likelihood that the subject property is contaminated.

[8] The Complainant argues that the combination of all these factors, has resulted in the subject property value being significantly impaired by virtue of the uncertainty of potential use of the property. The Complainant has termed this as obsolescence, and they have grouped under this term the following items;

- a. A Phase 1 Environmental Assessment completed in Feb. 2013 (Ex. C2) has determined that the properties on either side of the subject (east & west) are likely contaminated. The status of a likely Phase II Environmental Assessment is unknown except to say that one was suggested in the Phase I report.
- b. The Complainant has another development actually on the Airport land (presumably occupied under a land lease), and the City has been negotiating an expropriation of the improvements (because the City own the land which will be part of the redevelopment).

- c. The Complainant represents that part of the discussion about the expropriation with the City involved the possibility of transferring the improvements on the Complainant's Airport land to the subject property.
- d. The Complainant further advises that when the City realized that the subject property might be contaminated, they discontinued the discussions to transfer the improvements from the Complainant's airport land to the subject property (Outlined in the two letters Ex.C1 pgs. 27 to 35 which deal with the Complainants Airport land and the outcome of discussions to transfer the improvements to the subject property).
- e. At the present time, the Zoning for the subject is MA2 a zoning which they argued is a more limited land use than other industrial zoning because it encourages airport related uses. The future zoning when the airport closes is unknown.
- f. The Complainant warrants that they have had discussions with the City (presumably the Planning, Real Estate and/or Legal Departments) which have suggested to them that the City will not allow them to develop the subject property for any purpose until the extent of the contamination (if any) is known, and that the most likely use of the property would be as a green buffer to shield the residential lands to be developed on the airport lands from the noise and industrial uses adjacent to the Yellowhead Tr.

[9] The Complainant argues that, taken together, all of these facts result in a piece of property which cannot be developed, at least, until the extent of the contamination (if any) is known and/or the City determines what uses it might permit on the subject. The Complainants have chosen to call this obsolescence, and they argue that it significantly impacts the value.

### *Implication for Value*

[10] In calculating the requested value, the Complainant selected four sales of properties (Ex C1 pg.17) three of which have some deficiency similar to the subject (i.e.: the subject has no street lights and no storm sewers). Two of the sites are irregular with a resulting limited development potential. A third site had no access at the time of purchase.

[11] The average value of the four sales was \$320,490 an acre, which translates into a site value for the subject of \$1,187,094. To this value the Complainant says it is necessary to apply a 75% factor to adequately reflect the total of all the obsolescence. The resulting arithmetic produces \$890,320, but in the disclosure, the Complainant calculates this as \$667,179 (Ex. C1 pg. 17 & pg. 6).

[12] In the alternative, the Complainant also raised a Parkland rate of \$20,000 per acre presumably related to their assumption that the subject land use might be restricted to a "park like" buffer.

[13] In any event, the request to adequately reflect the sum total of the obsolescence was \$667,179, and the Complainant asked that the value be reduced to that amount.

### **Position of the Respondent**

[14] At the outset, the Respondent indicated that as of the valuation date (July 1<sup>st</sup> 2012) and at the condition date (December 31<sup>st</sup>, 2012), no contamination had been found on the subject property. Therefore as far as the City was concerned there was no contamination on the subject property. The Respondent noted that even the Phase I Environmental report was not received until February 2013 (at least one month past the condition date), and in response to questioning, the Complainant indicated that the Phase I report did not say there was contamination on the subject property.

[15] The Respondent noted that the City policy was to recognize contamination on the site when it had been proven to exist.

[16] The Respondent indicated that the Assessment department was not aware of any negotiations or discussions between the Complainant and any other City Department about whether there was contamination or why the City would or would not proceed with purchase and/or expropriation of the subject.

[17] The Respondent indicated that now that the Assessment department had been alerted to the potential of contamination, they would be responsive to a finding of contamination on the site and would act to change the value to reflect site conditions.

[18] Until that happened, the Assessment Department would base the valuation on known facts, and they referred to their four sales comparables and two equity comparables to support their assessment (Ex R1. Pg. 12).

[19] The Respondent noted that their four sales comparables supported the value for the subject property, and pointed out that while the subject zoning encouraged airport related uses, industrial uses similar to the comparables were also permitted.

[20] The Respondent also noted that the City had a procedure for adjusting for lack of services and that this procedure (Ex. R1 pg. 33) would have been applied to the subject property in calculating the assessment.

[21] They noted that the Respondent's Comparable 4 was very similar to the subject in that it was partially serviced and located neighbouring a heavily contaminated site. It supported the assessment of the subject.

[22] The Respondent raised issues with two of the Complainant's four comparables, and noted as well, that the Complainant's first comparable actually supported the assessment even with a major shape issue (Ex. R1 pg. 25).

[23] The Respondent also included two equity comparables from the airport area which supported the assessment (Ex. R1 pg. 17).

[24] In summary they noted that the subject property was being used as an industrial storage site on the Condition date, and the valuation was completed based on the use and zoning in place on that date. They asked for confirmation of the assessment at \$1,557,500

## **Decision**

[25] The Complaint is denied and the assessment is confirmed at \$1,557,500.

## **Reasons for the Decision**

[26] The CARB considered all the evidence and argument.

[27] The assessment process in Alberta is an annual event, and one of the benefits of that timing is it allows for changes to conditions in land and buildings to be reflected in the assessed value in a timely manner.

[28] The assessment legislation has established specific timelines and one of those is the condition date for the land and/or improvement which is to reflect the condition of the property to be assessed at Dec. 31<sup>st</sup> of the year prior to the tax year.

[29] The CARB agrees with the Respondent that on Dec 31<sup>st</sup> 2012, the subject property was not known to be contaminated. Even when the first "official" Environmental Assessment was received almost two months after the condition date in Feb. 2013 (Ex. C2), it still did not find that the subject property was contaminated. It said that it could be, and recommended further action.

[30] The Complainant agreed under questioning that the subject might be contaminated but certainly no one knew for certain.

[31] The other element of the obsolescence cited by the Complainant related to the uncertainty over the use resulting from the potential for contamination.

[32] The CARB appreciates the frustration in dealing with a departmentalized institution like the City, but it is a fact of life that just because one department of the City has some information, does not mean that another department will have access to that information, or even know of its existence.

[33] In the case at hand, the Complainant concluded that because one department did or did not make a decision to cease the expropriation, it was proof that the City possessed some information. There is no evidence as to what City department knew anything about any contamination, and there was certainly nothing produced in the evidence or at the hearing which would prove that the subject property would be unable to qualify for any legitimate use provided for in the zoning.

[34] Accordingly, the CARB finds that a claim of obsolescence based on contamination and a restricted development potential is not supported by the evidence provide at the hearing.

[35] As a result, the CARB concludes that the Comparables used by the Respondent adequately establish the value because they reflect the "current" use and permitted zoning of the subject and support the valuation of the subject.

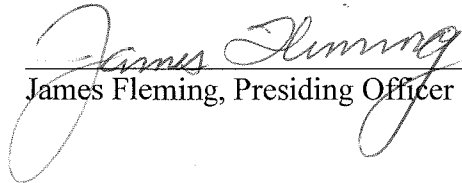
[36] Accordingly the assessment is confirmed as noted in the decision.

**Dissenting Opinion**

[37] There was no dissenting opinion.

Heard commencing November 15, 2013.

Dated this 26<sup>th</sup> day of November, 2013, at the City of Edmonton, Alberta.

  
James Fleming, Presiding Officer

**Appearances:**

Michele Warwa-Handel, APTAS  
for the Complainant

Aaron Steblyk  
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.*