

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 01536

Assessment Roll Number: 1159011

Municipal Address: 3946 76 AVENUE NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Robert Mowbrey, Presiding Officer

Brian Carbol, Board Member

Brian Frost, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board Members indicated no bias in the matters before them.

Background

[2] The subject property is a 10,062 sq ft average quality warehouse property on a 57,390 sq ft medium industrial (IM) zoned site. The subject property exhibits 18% site coverage. The subject property was built in 1980 and its effective year built is 1982. The subject improvements are located at 3946 – 76 Ave NW in the Weir Industrial area of south east Edmonton.

Issue

[3] Is the assessment too high when considering the sale price of the subject property?

Legislation

[4] 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

[5] It is the Complainant’s position that the subject property is assessed in excess of its current market value. In support, a 20 page brief was presented (Exhibit C-1) as well as a previous Board decision, (Exhibit C-2).

[6] The Complainant stated the property sold for \$1,400,000 in August 2010 and was regarded as a true market transaction between two separate and unrelated parties. The Certificate of Title, (C-1, pages 10 and 11) and Network report for the sale, (Exhibit C-1, page 12) were provided in confirmation of the sale details.

[7] The Complainant provided a CARB Board Order (Exhibit C-1, pages 14 – 17) which stated that the arms length sale of the subject property is the best indicator of value. The order quoted Alberta Court of Queen’s Bench 697604 Alberta Ltd v. Calgary which stated that the sale of the subject property should form the most accurate indication of value. A second Board Order, (Exhibit C-2) was as well provided that as well confirmed a reduction based on sales price.

[8] The Complainant added that the sale price of the subject property has been time adjusted by utilizing 1.1270 adjustment factor established by the City of Edmonton’s time adjustment schedule from the date of sale to the valuation date (Exhibit C-1, page 13).

[9] The Complainant requested that the Board reduce the 2013 assessment from \$1,906,000 to \$1,577,000.

Position of the Respondent

[10] The Respondent's position is that the subject property is assessed fairly and equitably. In defending the 2013 assessment, the Respondent provided the Board with a 69 page disclosure package marked as Exhibit R-1.

[11] The Respondent provided 6 sales comparables that indicated a range in a time adjusted sale price of between \$165 and \$241 per sq ft. They averaged \$189.43 per sq ft, (Exhibit R-1, page 19).

[12] The Respondent provided 6 equity comparables that indicated a range of assessments for similar nearby properties of between \$172 and \$191 per sq ft and averaged \$189 per sq ft, (Exhibit R-1, page 26).

[13] The Respondent stated one sale does not make a market and the subject property sale in itself is insufficient to shift onus. The Respondent further added that because a purchaser made a good deal, as proven by the Respondent's sale comparables, it is not necessarily a true indicator of market value.

[14] The Respondent concluded that an assessment must be based on multiple sales and as such requested that the Board confirm the 2013 assessment of \$1,906,000.

Decision

[15] The Board's decision is to reduce the 2013 assessment from \$1,906,000 to \$1,577,000.

Reasons for the Decision

[16] While the Board considered the evidence as put forth by the Respondent; the Board notes that the Complainant, in its questions to the Respondent exposed weakness in the Respondents sales comparables because of discrepancies in information as between Network and City data, locational differences as between the subject and the comparables and in one case a possible motivated sale to a tenant.

[17] The Board did not question the credibility of the City data but rather wondered if better data may have been available. The Board further found it notable that the low end of the Respondent's range of sale comparables at \$165 per sq ft better supported the Complainant's requested reduction to \$156.72 per sq ft that it did the requested confirmation of \$189 per sq ft.

[18] The Board reviewed the Certificate of Title and the Network document relating to the sale of the subject and was satisfied that the sale was fully arms length and that it was a valid sale. The *Municipal Government Act* defines "market value" as: 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.

[19] However, the Board nevertheless concluded that a reduction was appropriate. The Board relied upon *697604 Alberta Ltd v. Calgary (City of)*, ABQB 2005 512 (697604) in reaching this decision. In 697604, the Court found the Municipal Government Board erred when it failed to rely "on evidence of value provided by the recent sale of the Property [the subject]." In reaching

this conclusion, the Court relied upon the *Re Regional Assessment Commissioner, Region No.11 v.Nesse Holdings Ltd. et al* (1984), 47 O.R. (2nd) 766 (Ont.H.C.J.Div.Ct.), wherein the following comments were made:

...the price paid in a recent free sale of the subject property itself, where, as in this case, there are neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to that the market value of the property is. It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing h market value of that property.

I think that generally speaking the recent sale price, if available as was the case, is in law and, in common sense, the most realistic and most reliable.

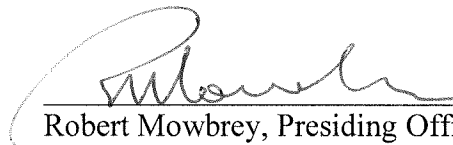
[20] The Board was cautious to consider the effect of time on the sale of a property. While the City time adjustment table serves a purpose in establishing a constant in the time adjustment process on a city wide basis, it does not recognize specific market factors as they relate to a particular property or micro market. The Board determined that in the absence of evidence to the contrary, use of the City time adjustment factor as against the 2010 sale price of the subject property was in this instance appropriate.

Dissenting Opinion

[21] There was no dissenting opinion.

Heard commencing August 1, 2013.

Dated this 21st day of August, 2013, at the City of Edmonton, Alberta.


Robert Mowbrey, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Luis Delgado, Assessor
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.