

Edmonton Composite Assessment Review Board

Citation: Sorrel Enterprises Ltd. (Altus Group) v The City of Edmonton, 2013 ECARB 01681

Assessment Roll Number: 1066380
Municipal Address: 3738 97 Street NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Sorrel Enterprises Ltd. (Altus Group)

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Shannon Boyer, Presiding Officer
Darryl Menzak, Board Member
Mary Sheldon, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties had no objection to the Board's composition. As well, the Board Members had no bias with regard to this file.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject is an average condition medium warehouse located at 3738 – 97 street, in the Strathcona Industrial Park, and is classified as Industrial Group 18, Core South. The subject was built in 1979 with site coverage of 41.4% and a building area of 27,041 square feet including 6,271 square feet of office space and 20,770 square feet of warehouse space. The warehouse and parking lot is setback from 97 street by a wide City owned right of way and power lines.

[4] The subject is assessed using the sales comparison approach and the 2013 assessment is \$3,032,000. The Complainant is seeking a reduction of the assessment to \$2,728,800.

Issue(s)

[5] Is the Subject entitled to a negative adjustment to the assessment based on its setback from the roadway?

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] In support of the appeal, the Complainant presented written evidence, rebuttal evidence and oral argument for the Board’s review and consideration (C-1 and C-2).

[8] The Complainant argued that a negative 10% adjustment should be made to the assessment due to the set back from 97 street caused by a wide City owned right of way separating the Subject from 97 street. The width of the setback is unknown. Two driveways dissect the setback and connect the Subject to 97street.

[9] The power lines run north to south above the right of way and a power line tower sits in the north east corner.

[10] The Complaint argued that the deep setback negatively affects the value of the Subject by restricting access to the roadway and by reducing exposure of the Subject to passing traffic.

[11] The Complainant noted portions of the City of Edmonton 2013 Industrial Warehouse Assessment Brief which contains the City policy to allow negative adjustments to be applied to properties to recognize various influences on value. Two of these factors include rear building adjustment and limited access adjustment (C-1 page 12).

[12] The Complainant argued that the City policy should apply to the subject because the significant setback negatively affects the value. The Complainant also argued that the subject is less attractive to purchasers because the setback negatively affects retail space potential.

[13] The Complainant provided the Board with examples of five properties in which the City applied a 10% reduction to the assessed value (C-1 pages 13-17). In each case, a negative 10%

rear building adjustment was applied to the value of a second building. In doing so, the City acknowledged that the rear building was disadvantaged because it did not have exposure and/or direct access to the roadway.

[14] It was argued that the wide setback affects the subject in a similar manner. Accordingly, the spirit or intent of the policy applies in this circumstance and the facts warrant application of a similar negative 10% adjustment to the 2013 assessment.

[15] The Complainant's brief included reference to case law and three Board Orders (068/04, 046/06 and 025/05) which discuss the rights of the taxpayer to an assessment not in excess of that which is regarded as equitable and not to be assessed in excess of actual value (C-1 page 20).

[16] Reference was also made in the brief to the following legislation: MGA s.1, 285, 289(2), 293(1), 293(2), 299(1), 467(2) and MRAT s. 2, 3, 4(1), 5(1), and 6(1) (C-1 pages 21 to 27).

[17] In rebuttal the Complainant produced property reports, aerial photographs, photographs and street maps to illustrate that all four of the Respondent's sales comparables and nine equity comparables, do not suffer from a wide setback from the roadway, and are, therefore, unlike the subject.

[18] The Complainant requested a reduced assessment of \$2,728,800.

Position of the Respondent

[19] In support of the assessment, the Respondent presented written evidence and oral argument for the Board's review and consideration (R-1).

[20] The Respondent also referred to their 2013 Industrial Warehouse Assessment Brief (R-1 pages 8 to 11). The factors affecting value were identified and explained to the Board. The Respondent listed the factors in order of importance as follows: main floor area; site coverage; effective age; condition; location; main floor finish area, and upper finish area.

[21] The Respondent described the City policy to apply negative adjustments where warranted. The policy reads in part: "*Other adjustments may be applied to properties on a site specific basis to recognize various influences on value which include but are not limited to:*" (R-1 page 10).

[22] The Respondent stated that a negative adjustment is not warranted for the subject. The Respondent argued that the wide setback does not reduce the value of the subject, suggesting that one driveway to 97 street is considered sufficient under its policy. The subject has the benefit of two driveways allowing trucks full access to the subject. Further, warehouse operations do not rely on drive by traffic for business, unlike retail stores. The Respondent stated that the onus is on the Complainant to establish that the value of the subject is diminished by the wide setback.

[23] The Respondent stated that the subject is located on 97 street which is a busy roadway. However, 97 street is not classified as major roadway which would warrant a positive adjustment. A map was produced to illustrate the properties within Industrial Group 18 (R-1 pages 12).

[24] The Respondent produced four sales comparables which, in its opinion, are similar to the subject with respect to the seven factors found to affect value in the warehouse inventory (R-1 pages 20-24). Similar to the subject, all are located in Industrial Group 18 and all are in average condition. Site coverage is similar ranging from 30% to 46%, with the subject being 41%. With the exception of comparable #2, the year built is similar ranging from 1976 to 1980, with the subject being 1979. With the exception of comparable 4, total building square footage ranges from 23,880 to 31,506, with the subject being 27,040 square feet. The subject has more main floor finished area than all the comparables. The time adjusted sale price per square foot ranges from \$90 to \$129 with the subject assessed at \$112 per square foot.

[25] The Respondent produced nine equity comparables which, in its opinion, are similar to the subject to support its position that the 2013 assessment is fair and equitable (R-1 pages 25-28). Similar to the Subject, all nine are located in Industrial Group 18 and are in average condition. Site coverage is similar ranging from 35% to 46%, with the subject being 41%. Effective year built ranges from 1978 to 1984, with the subject being 1979. The total building area ranges from 21,201 to 32,042 compared to the subject at 27,040 square feet. The time adjusted sale price per square foot ranges from \$106 to \$124 with the subject assessed at \$112 per square foot.

[26] The Respondent requested the Board to confirm the 2013 assessment of \$3,032,000.

Decision

[27] The Board confirms the 2013 assessment of \$3,032,000.

Reasons for the Decision

[28] The 2013 Industrial Warehouse Assessment Brief listed the factors which are shown to affect the value of the warehouse inventory, including main floor area; site coverage; effective age; condition; location; main floor finish area, and upper finish area. There is a mechanism for adjusting the assessment where other factors are shown to affect value such as limited access, exposure to roadway, lot shape, contamination, and easements and caveats. In using the phrase "including, but not limited to", the City policy does not limit the use of an adjustment to an exhaustive list of factors, but allows for adjustment where other, as yet unnamed factors, affect value (R-1 page 10). The Board is persuaded by the Complainant that the City policy is flexible enough to examine other factors that might affect value, such as a wide setback. If proven to negatively affect value, an adjustment is warranted.

[29] The Board examined all the evidence provided by the Complainant with respect to the setback argument. The Complainant did not provide any information with respect to the width of the City right of way.

[30] In examining whether a negative adjustment is warranted for lack of access, the Board notes that there is a driveway from the subject to 97 street. The driveway is direct and unobstructed allowing for the free flow of trucks and other traffic from the subject to the street and visa versa. There is a second driveway parallel to the first. There is no evidence that the second route is restricted in anyway and is, therefore, also a direct and unobstructed route to 97 street.

[31] The Board further notes that, notwithstanding its location along 97 street, the subject is assessed as if it was located along an internal road. The subject benefits from access to this busy route, while it is assessed similar to warehouses on less busy streets.

[32] No evidence was submitted to show that the overhead power lines or location of the tower affected or impeded the utility of the subject.

[33] The Board finds that there is adequate access to the subject from 97 street and visa versa. The power lines and tower do not impede the utility of the Subject. The Board also finds that the value of the subject has been not been diminished by the right of way, accordingly, a negative adjustment for limited access to 97 street is not warranted.

[34] In examining whether a negative adjustment is warranted for limited exposure to the roadway, the Board concludes that this is a warehouse operation which is assessed within the category of warehouse inventory. According to the photographic evidence, the subject's frontage fully faces 97 street and is visible from 97 street. No evidence was submitted that a higher visible presence from 97 street is integral to the subject's market value or that it is diminished by the right of way.

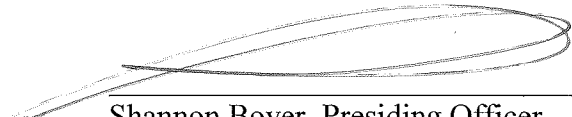
[35] The Board accepts the Respondent's sale and equity comparables and confirms the 2013 assessment of \$3,032,000.

Dissenting Opinion

[36] There was no dissenting opinion.

Heard commencing October 9, 2013.

Dated this 29th day of October, 2013, at the City of Edmonton, Alberta.


Shannon Boyer, Presiding Officer

Appearances:

Adam Greenough
for the Complainant

Suzanne Magdiak
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.