

Edmonton Composite Assessment Review Board

Citation: 863056 Alberta Ltd v The City of Edmonton, 2014 ECARB 00261

Assessment Roll Number: 1111541

Municipal Address: 20904 Stony Plain Road NW

Assessment Year: 2014

Assessment Type: Annual New

Assessment Amount:

Between:

863056 Alberta Ltd

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Shannon Boyer, Presiding Officer

Mary Sheldon, Board Member

Randy Townsend, Board Member

Procedural Matters

- [1] Upon questioning by the Presiding Officer the parties stated that they did not object to the composition of the Board. The Board members stated that they had no bias regarding this matter.

Preliminary Matters

- [2] The Complainant presented the Board with one document purporting to include both the disclosure and the rebuttal evidence. The Respondent objected to entering the document into evidence, partially on the basis that the rebuttal evidence (pages 10-14), had not been served on the Respondent. The Board determined that the first 10 pages of the document was the Complainant's disclosure evidence and was properly served on the Respondent; therefore, those pages were collectively marked as Exhibit C-1. With respect to the rebuttal portion of the document, the Respondent and the Complainant agreed to the admission into evidence of certain paragraphs, and those paragraphs were collectively marked as Exhibit C-2.

Background

- [3] The subject, known as the Royal Scott Motel, is a motel located at 20904 Stony Plain Road in the Winterburn Industrial Area on a 170,493.430 square foot lot, or 3.913 acres. It is comprised of 3 motel buildings, a gas bar/convenience store and a large parking lot that is occasionally used as a long term RV campsite. The Subject is accessed via a

service road that runs parallel to and north of Highway 16A/Stony Plain Road NW. It is zoned Highway Corridor. The 2014 assessment is \$2,099,000.

Issues

[4] Is the 2014 assessment fair and equitable?

Position of the Complainant

[5] The Complainant presented written and oral argument in support of its appeal that the 2014 assessment is too high, citing the following reasons:

- a) The highway access road from Highway 16A/Stony Plain Road to the motel was permanently closed 2 years ago. Guests must travel to 215 street and loop around to the service road that runs along the subject's southern property line. There is no signage to direct guests from the highway to the service road. No adjustment was made for poor road access;
- b) Due to difficulty with highway access, fuel supply trucks charge a higher rate for fuel delivery. As a result, the gas bar and convenience store closed down within 8 months of the road closure. No adjustment was made for reduced income;
- c) There is no water or sewer service, costing the owners in excess of \$20,000 yearly to haul water and sewage. No adjustment was made for lack of sewage and water service;
- d) In 2013, the subject operated with a significant decrease in revenue due to several factors: the gas station and convenience store ceased operations because of limited highway access; on June 8, 2012 Alberta Health Services issued a Full Closure Order; on June 19, 2012 the City of Edmonton Housing Branch issued a Stop Work Order #0951 for, in part, safety code violations; on May 2013, Edmonton Sustainable Development Department issued an order to cease the use of long term residential accommodation and storage in the RV campsite; and the motel was being extensively renovated to address the deficiencies in the various orders. Revenues in 2013 were \$200,000. No adjustment was made for reduced income;
- e) In rebuttal, the Complainant asserted that the Respondent's comparables are not comparable to the subject. Specifically, the Respondent's comparables have direct access to high traffic roadways and are located adjacent to or near other commercial properties.

[6] The Complainant bought the motel in 2001. He explained how the gas bar, convenience store, RV campsite and motel have been affected by the highway access closure, resulting in a significant downturn in business income and the ultimate closure of the gas bar and convenience store. He argued that potential customers and guests cannot determine how to access the subject or were greatly inconvenienced by the long, unsigned, detour. The highway access road closure is permanent.

[7] The Complainant stated that the agricultural lot to the north and west of the subject has been on the market for many years, with an asking price of \$300,000 per acre. Last year, the subject was listed for \$2,200,000, but after a period of 30 to 60 days, the realtor declined the listing, citing that the price was too high. Extrapolating, the 2014 assessment values the land at \$470,904 per acre, yet the neighbor cannot sell at \$300,000 per acre.

[8] The Complainant argued that the City failed to apply appropriate negative adjustments for lack of sewer services and reduced highway access. Accessing sewer would be costly because the connection would require construction under Highway 16A/Stony Plain Road. The Board was also informed that the bus stop near the subject was removed and the service road is in poor condition with no lighting.

[9] In rebuttal, the Complainant argued that all of the Respondent's comparables had superior road access and were in superior locations as compared to the subject. The subject is a motel in a rural settling without city services, yet it is taxed as a city property.

[10] The Complainant believes the value of the land to be \$1,200,000 and asked for a reduction of the 2014 assessment to \$1,154,450.

Position of the Respondent

[11] It is the Respondent's position that the 2014 assessment is correct and should be confirmed. In support, the Respondent presented a written brief and oral argument.

[12] The subject is assessed using the sales approach to land value combined with the replacement cost for the buildings. The assessment is not based on revenue, accordingly, the Subject's reduced business income is not considered as a factor in the 2014 assessment.

[13] Using Marshall and Swift with a classification of only fair condition, the buildings are valued in the amount of \$256,352. No downward adjustments were given for the buildings.

[14] The 2014 assessment was rolled over from the 2013 assessment. Had a new assessment been done, it would have been higher, in the amount of \$2,456,588 (with land value of \$2,200,236), as compared to the actual 2014 assessment of \$2,099,000 (with land value of \$1,842,648). Because the Complainant benefits from the roll over, a road access negative adjustment is not applied to the 2014 assessment.

[15] On questioning by the Board, the Respondent advised that in its discretion, the City can apply three levels of land access negative adjustments: 5%, 10% and 15%, depending on the severity of the access problem. The Respondent advised that the adjustment of 15% is given when a property is land locked or has access only through an adjacent parcel. A road access negative adjustment was not given in the 2013 nor the 2014 assessments.

[16] In discussing its sales comparables, the Respondent acknowledged that the subject property was unique, being a commercial property in an agricultural area. The Respondent's comparables were grouped into two: those based on similar location to the subject and those based on similar size to the subject. The zone and effective zone for each property was charted. Sales dates ranged from 2008 to 2013. Lot size ranged from 128,540 to 695,218 square feet, as compared to the subject at 170,493 square feet. Adjusted price per square foot ranged from \$16 to \$22, as compared to the subject at \$10.81. The majority of comparables were located east and south of the subject in commercial areas along busy roadways. Comparables 2 and 3 lacked supporting documentation due to a printing error.

[17] The Respondent also provided the Board with equity comparables. Equity comparables 1-3 with a price per square foot of \$17.57 to \$20.74, had services. Comparables 5 and 6 had a price per square foot of \$12.60 and did not have services. All equity comparables are located in Place La Rue which is bordered by Stony Plain Road to the north, 100 Ave. to the south, 178 Street to the east, and a service road adjacent to Anthony Henday to the west.

[18] Under questioning, the Respondent agreed that all of its comparables were in superior locations to the subject with superior direct access to busy roadways in more well developed areas. Further, two of the sales are from 2008. The Board was informed that the Respondent presented the best comparables available, as sales are rare. The Respondent argued that the differences in attributes are reflected in the price per square foot in the subject's 2014 assessment. For example, sales comparable 1 was valued at \$16 per square foot compared to the subject at \$10.81 per square foot. According to the Respondent, there is no discretion in generating the value of \$10.81, as it is derived from the Respondent's model.

[19] The Respondent advised that using the income approach to value as a test, with an income of \$200,000 and a CAP rate of 9%, the 2014 assessment would be approximately \$2,200,000.

[20] The Respondent argued that there is no way to reduce the assessment based on the Complainant's evidence as the evidence regarding the realtor and the neighbor's listing is hearsay.

[21] The Respondent requested the Board to uphold the 2014 assessment of \$2,099,000.

Decision

[22] The 2014 assessment is reduced to \$1,822,600, being the combined land value of \$1,566,250 and building value of \$256,352, rounded down.

Reasons for the Decision

[23] The Board examined the Respondent's Mass Appraisal Brief (MAB) where it was noted that:

- 1) A discretionary negative contingency may be applied for reduced access/egress.
- 2) A negative contingency is applied over and above the assessment model's calculations to deal with properties having unique circumstances where the property is affected beyond the typical.
- 3) There are four levels of negative contingency, ranging from 5% to 20%, depending on the level that access is restricted.

[24] The Board is convinced by the Complainant's argument that the subject's location in an agricultural area, north of Highway 16A, with access via a service road, is unique. The Board is satisfied that the permanent highway access road closure and resulting unsigned circuitous route to the subject, affects the property beyond the typical. The Board is persuaded by the various maps submitted by the parties and the Complainant's evidence, that cutting the subject off from Highway 16A/Stony Plain Road had a negative effect on the value of the land. In addition to significantly and permanently reducing the traffic count past the subject, it is a reasonable and foreseeable conclusion that potential customers are confused how to access the subject or do not want to bother with the detour.

[25] The Board concludes that the subject is inferior to the Respondent's sales and equity comparables in terms of its isolated location; reduced traffic; and reduced road access. The Board is of the view that while the Respondent's model may generate an adjusted square foot price of \$10.81, the model does not adequately take into account the effect of the highway access road closure on the subject property, if at all. The MAB provides a mechanism for access adjustment, stating that a discretionary adjustment may be made where limited road access affects the property beyond the typical. The Board finds that the circumstances warrant application of a negative adjustment for reduced access. According to the MAB, the negative adjustments can range from 5-20%. The Board finds that a 15% negative adjustment to the land value is appropriate in the circumstances.

[26] Based on a 15% negative adjustment, the land value portion of the 2014 assessment is reduced from \$1,842,648 to \$1,566,250.

[27] The Respondent argued that a negative reduction for road access is not warranted based on a theoretical 2014 assessment that purports to show a substantially higher land value. The Board did not find the theoretical 2014 assessment to be helpful because it was prepared after the appeal, so could not be the reason for denial of the adjustment; the purpose was to convince the Board that the value of the land is higher than the 2014 assessment before it; and the Complainant could not reasonably challenge the Respondent's claim because none of the calculations for the theoretical assessment was provided in the Respondent's brief.

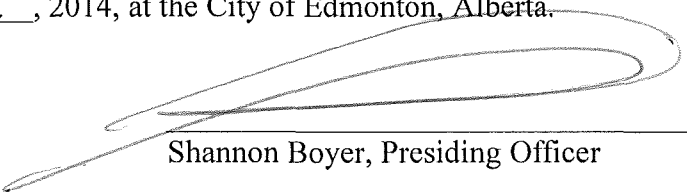
[28] While the highway access closure is not under the domain of the Respondent, but the Province, the Respondent must adapt to the new circumstances and provide the Complainant with a negative adjustment for reduced access in order to make the 2014 assessment fair and equitable, when compared to other properties of a similar type.

Dissenting Opinion

[29] There was no dissenting opinion.

Heard May 28, 2014.

Dated this 25th day of June, 2014, at the City of Edmonton, Alberta.



Shannon Boyer, Presiding Officer

Appearances:

Alkarim Bhanji

Mohamed Bhanji

for the Complainant

Tim Dueck

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.

Appendix

Legislation

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.

The *Matters Relating to Assessment Complaints Regulations* reads:

Abridgment or expansion of time

S10(1) A composite assessment review board may at any time, with the consent of all parties, abridge the time specified in section 7(d)

Exhibits

Complainant: C-1 10 pages
C-2 4 pages

Respondent: R-1 69 pages