

Edmonton Composite Assessment Review Board

Citation: Cirrus Holdings Ltd v The City of Edmonton, 2014 ECARB 00315

Assessment Roll Number: 1037795

Municipal Address: 1919 94 STREET NW

Assessment Year: 2014

Assessment Type: Annual New

Assessment Amount: \$10,939,500

Between:

Cirrus Holdings Ltd

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

John Noonan, Presiding Officer

Martha Miller, Board Member

Taras Luciw, Board Member

Background

[1] The subject property is an approximate 9.8 acre lot at the southwest corner of 23 Avenue and 91 Street in the Edmonton Research Park. The site is improved with an industrial /engineering complex that covers some 13% of the property's 427,848 square foot lot. The 2014 assessment was prepared by the cost approach with the improvements valued at \$4,877,578 and the land valued at \$6,062,114 for a total assessment (rounded) of \$10,939,500. The value of the improvements is not at issue, nor the per acre value of the land.

Issue

[2] The Board heard evidence and argument on a sole issue:

Should the subject assessment be adjusted to reflect a greater than typical 100 foot setback along the property's 23 Avenue exposure?

Position of the Complainant

[3] The current owner purchased the property in 1998. The land title carries a restrictive covenant, registration number 812 274 323, that requires a development setback of 100 feet along the property's northern border, 23 Avenue. Normally, the development setback in the Edmonton Research Park is 25 feet. The setback did not present a problem for the owner until recent plans were developed to add more development to the site. The new plans would result in a more typical site coverage somewhat in excess of 30%, but the 100 foot setback has created some planning difficulties relating to building placement and truck accessibility. As example, the owner had proposed to place a road on a portion of the setback to allow more convenient access to the planned new development, but this idea was rejected by the Research Park Authority. It was explained that alteration of the restrictive covenant would require the acquiescence of both the Research Park Authority and City Council.

[4] The restrictive covenant dates back to the original development of Edmonton Research Park, but some other owners have been able to make use of their setbacks or are non-conforming. As examples, it was pointed out that the immediate neighbor to the west. The BDBC (formerly Biomira) building uses their setback for stormwater management, Servus uses their setback for parking, and the City-owned ATC building partly intrudes into the setback area. Unlike these examples, the subject property has been stymied in the pursuit of some beneficial use of its setback area. Accordingly, the Complainant feels that the subject property has been treated unfairly. To redress this situation, the Complainant asked the Board to alter the subject assessment so that the Complainant was relieved of the responsibility of paying tax on the portion of land that could not be utilized due to the restrictive covenant. Specifically, the Complainant desired the Board to apply a 25 foot setback along the northern boundary, and remove the remaining 75 foot wide swath along 23 Avenue when calculating the amount of land that should be assessed. By the Complainant's calculation, removing the 75-foot wide swath would reduce the assessable area by 9% or .9 acre. The current land value of \$6,062,114 would be revised to \$5,516,523 and the total assessment reduced to \$10,393,909.

Position of the Respondent

[5] The Respondent acknowledged the existence of the restrictive covenant, it being listed on title, but questioned what the covenant entailed. In the complaint process, the Respondent had conversation(s) with the Complainant and advised him how, at a modest fee, to acquire a written copy of this covenant. Once supplied to the assessor, further discussion could take place. However, the Complainant had not availed himself of this opportunity, nor was this restrictive covenant disclosed in evidence. If in future the Complainant wished to consult with the Respondent regarding the value impact this covenant might have on the subject property, the Respondent was open to this negotiation. In the interim, it would be a dangerous precedent to alter the assessment by ascribing zero value to some portion of the setback.

[6] The Respondent's evidence package contained photos of the subject's setback area along 23 Avenue, as well as some of the neighbouring properties including the stormwater management pond at the BDBC building site. Attached to the complaint form was an architectural drawing that apparently envisioned an expansion to the existing building, and it was observed this plan wasn't adversely impacted by the 100 foot setback. Also included in evidence was an excerpt from *Edmonton Zoning Bylaw 12800* dealing with the Industrial Business zone, which required a 6 meter setback from a lot line abutting a public roadway or a residential zone, and a copy of the Area Structure Plan (ASP) for South Edmonton Common and Edmonton

Research and Development Park. Portions of the ASP were highlighted, notably dealing with high design standards and the inclusion of open spaces to achieve a desirable development. Setbacks were higher in the Research Park than called for in the zoning bylaw, but owners were aware of these requirements through reference to the ASP.

Decision

[7] The Board confirms the 2014 assessment of \$10,939,500.


Reasons for the Decision

[8] The Board is not satisfied that the greater than normal development setback along the property's 23 Avenue exposure permanently impairs the value of the subject property. The Complainant has encountered the rejection of at least one partial development idea for the setback area, placing a roadway on a portion of the setback, but one rejection does not mean the exclusion of any and all future potential uses. Even if all potential future development uses were rejected, the setback area could remain as a park area, or enhanced as a park area as an amenity of the property. The Board was impressed with the photos supplied in the Respondent's evidence package. The Research Park appears to have achieved its vision of creating a desirable development, and for a development that at least in parts is approaching 30 years of age, to still look as inviting as it does is all too rare. Curb appeal has some value, and it appears the Research Park has plenty.

[9] It might be the case that the Board in reaching this decision is overstating the value of the subject. The Board notes that the Respondent invited future consultation with the Complainant and encourages such, as and when it becomes apparent that the enhanced setback truly does have a negative impact on the market value of the subject property.

Heard May 30, 2014.

Dated this 23rd day of June, 2014, at the City of Edmonton, Alberta.



John Noonan, Presiding Officer

Appearances:

Rick Forest
for the Complainant

Scott Hyde
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.

Exhibits

C-1 (3 Pages), Complaint form and attachment – from the Complainant

R-1 (132 Pages), Respondent’s Submission