

Edmonton Composite Assessment Review Board

**Citation: DDK Holdings Ltd as represented by Colliers International Realty Advisors Inc.
v The City of Edmonton, 2014 ECARB 00502**

Assessment Roll Number: 3778743
Municipal Address: 11745 95 Street NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$2,279,500

Between:

DDK Holdings Ltd as represented by Colliers International Realty Advisors Inc.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Harold Williams, Presiding Officer
John Braim, Board Member
Lillian Lundgren, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. The Board members stated that they have no bias in this matter.

Background

[2] The subject property is a 23,319 square foot (sf) two storey retail plaza located at 11745 95 Street NW in the Alberta Avenue neighborhood. The main floor of the project consists of Downtown Auto, commercial retail units (CRUs) and a restaurant. The upper floor has ten apartments. The building has an effective year built of 1965 and is assessed in average condition.

Issue

[3] Does the time adjusted sale price of the subject property reflect market value as of July 1, 2013?

Position of the Complainant

[4] It is the Complainant's position that the best evidence of the market value of a property is the arms-length sale of the property. The subject property sold on December 3, 2009 for \$1,650,000. It transferred between VCW Holdings Ltd. and DDK Holdings Ltd who are unrelated parties.

[5] The Complainant argued that the purchase price represented market value. In support of this position, the Complainant presented an e-mail dated September 17, 2012 from Jim Nguyen, the buyer, that stated "Yes, I bought this building at the fair market value in December, 2009". The Complainant also presented a letter dated September 17, 2012 signed by Alfred Mah, the vendor, which stated that the sale price of \$1,650,000 in December 2009 was the fair market value for the property at that time.

[6] The Complainant advised the Board that the Edmonton Composite Assessment Review Board (ECARB) reduced the subject property assessment in 2012 and 2013. In the ECARB 2012 decision, the assessment was reduced from \$2,534,000 down to the sale price of \$1,650,000 because the Board believed that "the best indicator of market value of a property is the sale of the property itself". The Board also stated that "the sale of the subject property does not meet the definition of a market sale because the property was not listed on the open market; however, the Board took some comfort that the buyer and seller provided written evidence that the transaction was based on market value."

[7] In the ECARB 2013 decision, the Board reduced the subject property assessment from \$2,241,000 down to the time adjusted sale price of \$1,867,000. In its reasons, the Board stated that the sale of the subject property in 2009 was a valid sale. Once the Board determined that it was a valid sale, it turned its attention to the Respondent's evidence which stated that "the absence of backup (evidence) introduces a weakness to the analysis and its reliability".

[8] The Complainant provided three decisions issued by Assessment Review Boards that reduced the property assessment under complaint to the sale price of the subject property.

[9] The Complainant argued that the subject property is not a typical retail plaza. The property was originally built in 1942 and has an effective year built of 1965. The building fronts on 95 Street and is near 118 Avenue. Further, it is unusual to have an auto service located in a retail plaza with CRUs, a restaurant and apartments on the upper floor. It is difficult to find comparable sold properties.

[10] In summary, the Complainant applied the time adjustment factor used by the City of Edmonton's Assessment and Taxation Department to the sale price which resulted in a value of \$1,894,500. On this basis, the Complainant requested the Board to reduce the assessment to \$1,894,500.

Rebuttal

[11] The Complainant rebutted the Respondent's comparable rents listed in Exhibit R-1. The Complainant stated that Commercial Retail Units Medium (CRUMED) comparable rents were taken from properties that are newer than the subject property, and the most recent leasing activity in 2012 indicates that the assessed rents are too high. Nevertheless, the Complainant is not requesting the Board to use these comparable rents to value the subject property.

[12] The Complainant also stated that seven of the Respondent's comparable sales in Exhibit R-1 are not good comparables because six of the comparables are much smaller than the subject. The comparables range in size from 2,209 sf to 11,684 sf, and the subject property is 23,319 sf. The Complainant highlighted the comparable at 8406 118 Avenue as a good comparable because it is more similar in size, age and use to the subject property. It sold for a time adjusted sale price of \$95.39/sf.

[13] The Complainant also commented on the CARB decision respecting roll number 3043957 that was raised by the Respondent. The Complainant stated that the facts are different in this case because there were no below market leases for a period of nine years in place at the time of the sale of the subject.

Position of the Respondent

[14] The Respondent argued that the sale of the subject property should not be the sole basis of an estimate of value; especially when considering that within the framework of the *Municipal Government Act* (MGA), RSA 2000, c M-26, the estimate of value for assessment purposes cannot be predicted on anything besides the fee simple interest. The Respondent pointed out that past CARB decisions have confirmed assessments even when presented with a sale of the subject property that fell short of the assessment, as seen in the 2012 CARB for roll number 3043957. The Board was guided by the Government of Alberta's Principles of Assessment which states:

A sale price may not equal market value for any of the following reasons:

- For assessment purposes, the date that the property sold is different than the July 1 valuation date,
- The purchaser/seller may not have been aware that similar properties were selling for more or less than the property he or she purchased/sold,
- The buyer or seller may have been unduly motivated; or,
- The sale may have involved a trade, partial interest, special financing, personal property or assumed leases.

[15] The Respondent argued that one of the more important factors is the fact that the sale of the subject property did not reflect the fee simple interest; it reflected the leased fee interest because M&D Drafting has had a lease in place for the entire building that is below market and extends from 2007 to 2016. In a similar sense, when the subject sold in 2009 it contained a number of historical leases dated back to 2003 and 2005.

[16] As of the valuation date for the 2014 assessment year the sale of the subject is close to four years old. For the purposes of the annual audit and cap rate study only three years of sales are used. The Respondent explained that this means that the referenced sale was not used in the audit process or the model for the 2014 assessment. There is a higher risk of accuracy of using older sales or lease rates to determine market value due to changes in market conditions over time.

[17] Additionally, the sale of the subject is indicated by the Respondent's sales validation team as a private sale. "The property never went on market. The new owner used to be a tenant and owns the car repair shop. The new owner has spent \$160,000 on renovations and expects to spend more in near future." The definition of market value under section 1 of the MGA states:

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.

[18] The Respondent submitted that the onus of proving the incorrectness of an assessment is on the individual alleging it. The onus rests with the Complainant to provide sufficiently convincing evidence on which a change to the assessment can be based. The Complainant's evidence needs to be sufficiently compelling to allow the Board to alter the assessment. No market evidence, no sales, no rental information or the subject's rent roll was provided to support the requested value.

[19] The Respondent argued that the rental rates used to value the subject property are supported by the rental rates of similar properties. In support of this position, the Respondent presented a chart showing the median rental rates for CRUMED space at \$12.00/sf, retail (auto service) space at \$10.82/sf and restaurant space at \$12.63/sf. The subject assessment is based on CRU space at \$11.50/sf, auto service space at \$10.50/sf and restaurant space at \$12.50/sf.

[20] Although the subject property is valued on the income approach to value, the Respondent presented eight comparables sales that have a median time adjusted sale price of \$128.91/sf and an average time adjusted sale price of 153.81/sf. The subject property is assessed at \$97.75/sf.

[21] The Respondent disagreed with the Complainant that the subject property is atypical. Every property has something unique about it; however, there are many plazas with auto service shops and retail shops.

[22] In summary, the Respondent requested the Board to confirm the assessment at \$2,279,500.

Decision

[23] The property assessment is confirmed at \$2,279,500.

Reasons for the Decision

[24] The Assessment Review Board is guided by the provisions in the *Matters Relating to Assessment and Taxation Regulations (MRAT)*, AR 220/2004. In particular, *MRAT* section 2(c) requires the Board to determine typical market conditions for properties similar to the subject property. In order to determine whether the actual sale price of the subject property represents market value, evidence of what is typical in the marketplace is necessary. This requires evidence of the sale prices for similar properties that sold in the relevant time frame.

[25] The onus is on the Complainant to provide market evidence to show that the time adjusted sale price of \$1,894,500 for the subject property is typical for similar properties in the marketplace. No comparable sales were provided by the Complainant.

[26] The Board finds that the sale of the subject property in December 2009, does not meet the definition of "market value" as defined in section 1(1)(n) of the *MGA* because it did not sell in the open market place. This transaction occurred between the tenant and landlord without the benefit of exposure to the marketplace.

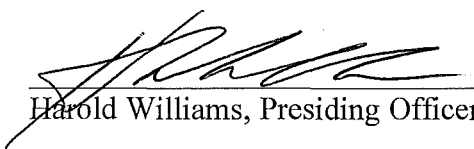
[27] The subject sale occurred approximately three and one half years prior to the valuation date of July 1, 2013 and some minor renovations have taken place since the sale, further calling into question whether the time adjusted sale price is an accurate reflection of market value.

[28] With respect to the Complainant's argument that the subject property is atypical, the Board did not find clear evidence in support of this position. Therefore, the subject property should be valued as a retail plaza based on the sales of similar properties in accordance with legislation.

[29] In the absence of any market evidence from the Complainant that demonstrates the time adjusted sale price of the subject property represents market value, the decision of the Board is to confirm the assessment at \$2,279,500 based on the Respondent's sale comparables.

Heard June 25, 2014

Dated this 14th day of July, 2014, at the City of Edmonton, Alberta.


Harold Williams, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Alana Hempel
Tracy Ryan
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 and Taxation Regulations*, AR 220/2004:

Mass appraisal

- s 2 An assessment of property based on market value
- (a) must be prepared using mass appraisal,
 - (b) must be an estimate of the value of the fee simple estate in the property, and
 - (c) must reflect typical market conditions for properties similar to that property.

Exhibits

Complainant’s Brief, C1 – 46 Pages
Complainant’s Rebuttal, C2 – 6 Pages
Respondent’s Brief, R1 – 113 Pages