

Edmonton Composite Assessment Review Board

**Citation: Refrigerative Supply (Burnaby) LTD as represented by Robert Gagne, AEC
Property Tax Solutions v The City of Edmonton, 2014 ECARB 00562**

Assessment Roll Number: 10136494

Municipal Address: 4735 Roper Road NW

Assessment Year: 2014

Assessment Type: Annual New

Assessment Amount: \$9,908,500

Between:

**Refrigerative Supply (Burnaby) LTD as represented by Robert Gagne, AEC Property Tax
Solutions**

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Willard Hughes, Presiding Officer

Jasbeer Singh, Board Member

Mary Sheldon, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition. No bias or conflict of interest was raised by any member of the Board.

[2] At the outset of the hearing, all witnesses who would be presenting evidence were sworn by a member of the Board. This oath on the part of the witnesses will carry forward to evidence given during hearings for roll numbers 10087852, 10026911, 10026914, 10038502 and 9977985.

Preliminary Matters

[3] Subsequent to the conclusion of the Complainant's presentation of evidence concerning the property under appeal, the Respondent made an application to dismiss the complaint and confirm the current assessment for the subject. The Respondent argued that the evidence provided by the Complainant had not met onus, the obligation to provide sufficient compelling evidence to allow the Board to alter the assessment of the subject. The Respondent submitted that all the properties presented by the Complainant in its evidence as comparable sales and comparable equity properties were clearly inferior to the subject and did not provide any basis to allow the Board to alter the assessment. Of the four comparable properties presented by the Complainant, the Respondent argued that one is a non-arm's-length sale transaction and should not be used in establishing value for the subject. Of the remaining three comparable sales, the

Respondent stated that all properties are older than the subject, one by at least twenty years. Two comparable properties are in an inferior location, two have inferior site coverage and two are larger than the subject.

[4] The Complainant argued that there should be an opportunity for him to question the Respondent's evidence and that onus must have been met since the Respondent had provided a recommendation for reduction in its disclosure.

[5] The Board's denied the Respondent's request to dismiss the complaint and to continue with the merit hearing. The Board acknowledged that the onus of proving the incorrectness of an assessment is on the individual alleging it. The Complainant needs to provide sufficiently convincing evidence on which a change to the assessment can be based. In this case, the Board found that, despite the Respondent's argument as to the inadequacy of the Complainant's evidence, the Complainant was able to raise some questions and evidence as to the correctness and equity of the assessment with supporting documentation. In the opinion of the Board, this evidence was sufficient to establish merit to the appeal and allow the case to proceed.

Background

[6] The subject is an industrial property situated in the Pylypow Industrial Area of Edmonton at 4735 Roper Road, north of the Whitemud Freeway, in industrial group location 18. There is one building on site, constructed in 2011, with a total assessable area of 36,719 square feet. The lot is 4.87 acres in size and the corresponding site coverage is 14%.

[7] The current assessment of the subject is \$9,908,500 calculated by the direct sales methodology. This translates to a value of \$270 per square foot for the total building area or \$330 per square foot for the main floor area.

Issue

[8] The parties identified three issues to be decided at the merit hearing:

- a) What is the correct market value of the subject?
- b) Is the subject assessed equitably with similar properties?
- c) Is a 5% reduction in the subject assessment, as proposed by the Respondent, appropriate?

Position of the Complainant

[9] In support of the position that the current assessment of the subject is excessive, the Complainant provided an assessment brief. Included in this assessment brief is a chart of the details of the sales of four properties which, in the opinion of the Complainant, are similar to the subject. Also included in this chart are details of the current assessments of these properties.

[10] Of the four sales presented, the Complainant acknowledged that comparable #3 (at 8803/8915 58 Avenue), is a non-arm's length transaction and that no weight should be given to it.

[11] The Complainant noted that in selecting properties comparable to the subject, he looked chiefly for similarities in main floor area, site coverage and age, which, he argued, are the top three drivers of value in the industrial inventory according to the Respondent's assessment brief.

[12] The Complainant noted that the time adjusted sale prices per square foot of the remaining three comparable properties range from \$144 to \$196 and that this represented market value for those properties. The highest time adjusted sale price per square foot of the comparable properties, with #3 eliminated, is \$196 and the median is \$160 per square foot.

[13] The Complainant argued that this market evidence does not support the assessment of the subject at \$270 per square foot total area.

[14] The Complainant noted that the current assessments per square foot for those same three comparable properties ranged from \$ 115 to \$175.

[15] The highest assessment per square foot of the comparable properties is \$175 with a median of \$172. The Complainant argued that these values do not support the assessment per square foot of total area of the subject at \$270 and show that the subject is inequitably assessed.

[16] The Complainant submitted that the elevated assessment of the subject might be explained by some unknown factor with respect to the location of the subject in Pylypow/Roper. To determine if this could be the case, the Complainant submitted a list of industrial sales in that area. These properties did not have characteristics in common with the subject except for the location in the Pylypow/Roper area. The Complainant stated that this chart showed that there was nothing significant about the Pylypow/Roper area which would warrant an elevated assessment for the subject.

[17] The Complainant submitted that market sales of comparable properties are the strongest indicator of value and argued that the median time adjusted sale price per square foot of the remaining three comparable properties of \$160 should be applied to the subject. This would give a total value for the subject of \$5,875,040.

[18] During questioning, the Complainant acknowledged that the year of construction for comparable #1 (at 7603 McIntyre Road) should be 2001 and the year of construction for comparable #2 (at 11603 180 St.) should be 2000. The Complainant also acknowledged that the site coverage of the first two comparable properties is inferior to the subject. As well, those first two comparable properties are larger than the subject. The Complainant also noted that comparable #2 and comparable #4 (at 15210 Yellowhead Trail) are located on the north side and acknowledged that their locations are inferior to the location of the subject. The Complainant acknowledged as well that other factors in the valuation of the industrial inventory, such as main floor finished area and upper finished area were not considered in the selection of the comparable properties.

Position of the Respondent

[19] In support of the position that the current assessment of the subject is correct and equitable, the Respondent provided an assessment brief.

[20] The Respondent commenced his presentation by pointing out the mass appraisal approaches and the assessment parameters. The Respondent emphasized the factors which affect value in the industrial inventory. In descending order of significance, these factors are: main floor area, site coverage, effective age, industrial group location, condition, main floor finished area and upper finished area.

[21] The Respondent also commented on various adjustments which may be applied to properties on a site specific basis to recognize various influences including, but not limited to rear building adjustment, industrial group location adjustment, lot shape adjustment, limited access adjustment, contamination adjustment, easements and caveats adjustment.

[22] Particular emphasis was placed on qualitative adjustments as opposed to quantitative adjustments. The Respondent indicated that specific adjustments for different factors are not quantifiable and that a qualitative analysis is preferred. This analysis ranks comparable properties from best to worst and places the subject within that ranking to determine an upper and lower limit.

[23] The Respondent also commented on the use of averages in determining a value per square foot of building area for industrial properties. In the opinion of the Respondent, averages are useful where differences are minor: however, no two industrial properties are identical and averages can become misleading.

[24] The Respondent concluded the general information portion of his presentation by commenting on the components of a valid assessment to sale ratio analysis and indicating that the models and processes used by the municipality in determining property values are submitted annually for audit in order to determine the accuracy of the model and predictions.

[25] The Respondent advised the Board that the municipality is prepared to grant a 5% reduction to the current assessment of the subject. This would result in an amended assessment of \$9,413,000. The Respondent stated that the reason for this recommendation is the age of the subject. After discussions with some property owners, the Respondent stated that it was discovered that the newest of properties in the industrial inventory had been slightly overvalued. During questioning, the Respondent stated that a correction could not be issued to the subject because it was under complaint. Further, the Respondent stated that the 5% reduction had been offered to newer properties in the inventory that had filed complaints.

[26] With respect to the market value of the subject, the Respondent then presented a chart of the sales of properties which, in the opinion of the Respondent, are similar to the subject. The range of time adjusted sale prices per square foot for main floor area is from \$222 to \$343 and the range for total area is \$217 to \$274. The Respondent argued that this evidence supported the assessment per square foot of main area at \$330 (\$314 if 5% reduction is accepted) and \$270 per square foot for total area (\$256 if 5% reduction is accepted). The Respondent acknowledged that two of the comparable properties are superior in main floor area and total finished area and others are inferior in site coverage, age and location. However, the Respondent argued that the assessment per square foot of the subject is at the middle of this grouping and that this balances the negatives and positives of the grouping. The Respondent stated that this evidence showed that the assessment of the subject is in line with the market value.

[27] The Respondent also provided a re-charting of the comparable sales which had been provided by the Complainant. Evidence was provided to show that the Complainant's comparable #3 is a non-arm's length transaction and noted that this had been agreed to by the Complainant. This re-charting of the Complainant's remaining three comparable properties showed that all were inferior in age to the subject, two were inferior in location, two were inferior in site coverage, main floor area, main floor finished area and total finished area. Overall, the Respondent stated that the comparable properties presented by the Complainant are inferior to the subject and therefore of little assistance in establishing value for the subject.

[28] To demonstrate that the subject had been equitably assessed, the Respondent provided a chart of the assessments of four properties which, in the opinion of the Respondent are similar to the subject. The assessments per square foot of total area of those properties ranged from \$230 to \$276. The Respondent stated that two of the comparable properties are slightly superior to the subject and two are slightly inferior. The assessment per square foot of the subject at \$270 per square foot (or \$256 if the 5% recommendation is accepted) is in the middle of the range. In the opinion of the Respondent, this demonstrates that the subject is equitably assessed.

[29] The Respondent concluded by requesting confirmation of the subject assessment. The Respondent argued that the comparable properties presented by the Complainant, both the three properties in the chart in Exhibit C-1 and the five properties in the composite chart in exhibit C-2, are inferior to the subject and that applying a median time adjusted sale price per square foot of those inferior properties does not assist in arriving at a market value for the subject. With respect to equity and the question of treating similar properties in a similar manner, the Respondent stated the Complainant's method of taking the top value of a range of inferior properties in order to find an equitable value for the subject does not show that similar properties have been treated differently.

[30] With respect to a 5% reduction granted to newer industrial properties under appeal, counsel for the Respondent reminded the Board that while this reduction had been offered by the assessor, if granted by the Board, an inequity would be created. The subject would be treated in one way while other properties in the "newer" industrial category that were not under complaint would be treated differently by not being offered this reduction.

Complainant's Rebuttal

[31] Subsequent to the presentation of the Respondent's evidence, the Complainant presented a rebuttal document.

[32] In this document, the Complainant presented a composite chart of the sales of properties chosen from the comparable sales presented by both parties. Three of the comparable properties were the three from the Complainant's comparable chart -- #1 (7603 McIntyre Road), #2 (11603 180 St) and #3, (15210 Yellowhead Trail). The remaining two were selected from the Respondent's list of comparable properties -- 22507 112 Avenue and 9304 41 Avenue. In this chart, the range of time adjusted sale prices per square foot is from \$144 to \$222 and the assessments per square foot of those comparable properties range from \$115 to \$175.

[33] The Complainant argued that this evidence demonstrated that the assessment of the total area of the subject at \$270 per square foot (\$256 per square foot if recommendation accepted) is not supported and is excessive.

[34] The Complainant also included in this chart an ASR (Assessment to Sales Ratio) or variance column which demonstrated that there was no correlation between the market values of the comparable sales as demonstrated by the time adjusted sale prices per square foot and the assessments per square foot of those same comparable properties. . This variance column showed that the median assessment to sale ratio of the comparable properties is 0.72 and ranges from 0.59 to 1.19. The Complainant argued that this evidence showed that all assessments are considerably lower than their market value.

[35] The Complainant argued that the assessment of the subject at \$270 per square foot (or \$256 per square foot if 5% reduction is accepted) is not supported by either sales evidence or equity.

[36] The Complainant argued further that the subject should be entitled to the same degree of lowered assessments as the comparable properties enjoy. Those comparable properties are assessed much lower than their market value and the subject should have the same benefit or an inequity is created. In support of this argument, the Complainant discussed *Jonas v Gilbert*, 1881 Carswell NB 71, 5 S.C.R. 356 ("*Jonas*"), which states that "...no one class of individuals, or one species of property, shall be unequally or unduly assessed" (at para 9). The Complainant also presented Assessment Review Board Notice of Decision No. 0098 154/10 ("*Decision No. 0098*") in support of the same proposition.

[37] The Complainant concluded by suggesting that the Board reduce the current assessment of the subject to one of three values. The first suggested reduction was to \$5,989,654 based on the complete sales chart in Exhibit C-1. The second suggested value was \$5,875,040 based on the sales chart in Exhibit C-1 with comparable #3 eliminated. The third suggested value was \$6,425,825 based on a value of \$175 per square foot which is the top value in the chart contained in the Complainant's Rebuttal at which a similar property is assessed.

[38] With respect to the Respondent's offer of a 5% reduction to the current assessment of the subject, the Complainant argued that while a reduction is welcome, 5% is not sufficient. The comparable properties are assessed at a value per square foot no higher than \$175. The subject is assessed at a much higher value and the Complainant argued that this shows an ongoing inequity between the subject and similar properties.

Decision

[39] The Board reduces the 2014 assessment of the subject to \$9,413,000

Reasons for the Decision

[40] The Board notes that it is the responsibility of the Complainant to provide sufficient convincing evidence to cast doubt on the accuracy of the subject assessment.

[41] With respect to the first issue concerning market value, after careful investigation the Board is of the opinion that the sale transactions offered by the Complainant as evidence do not assist in determining the market value of the subject. Once comparable #3 is eliminated, the Complainant, in its initial disclosure, only presents the details of the sales of three properties. Of those three remaining properties -- #1 (at 7603 McIntyre Road), #2 (at 11603 180 St) and the last (at 15210 Yellowhead Trail) -- all are older than the subject, the last one by almost twenty years. Both #1 and #2 are inferior in site coverage as well as being larger. The location of both property #2 and property #4 (at 15210 Yellowhead Trail) on the north side is inferior to the subject. The Board finds that the wide gap in characteristics between this group of properties and the subject does not give a basis for establishing accurate value for the subject.

[42] As well, with respect to the composite chart of comparable properties presented by the Complainant in the rebuttal document, the Board notes that the addition is of two more properties, which are dissimilar to the subject. Both the additional properties are older and with inferior site coverage. One of the added comparable properties, at 9304 41 Avenue, is

considerably larger than the subject and the other, at 22507 112 Avenue, is in a different location than the subject.

[43] In the opinion of the Board, given all the differences between the subject and the properties presented as comparable, the Complainant has not supported a request for an amended assessment of \$5,989,864 or \$5,875,040 based on market value. The Board agrees with the Respondent's argument that a market value for the subject cannot be determined by applying the median or average value of a group of inferior properties. The actual market value of the subject would be superior to the range of the Complainant's comparable properties.

[44] With respect to the Complainant's argument that the subject is inequitably assessed with similar properties, the Board notes that the properties compared must be similar or comparable with the subject in order to arrive at a valid determination. The Complainant used as equity comparables the same properties presented as market comparables. As noted above, all the properties presented in Exhibit C-1 and then again in the composite chart in Exhibit C-2 are inferior to the subject. The Board is of the opinion that to take the top assessment value per square foot of \$175 of those inferior properties and then apply it to the subject, is not reasonable.

[45] The Board notes that the Respondent provided a chart of the assessments of four properties which, in the opinion of the Respondent, are similar to the subject. Two of those properties are somewhat superior to the subject and two are slightly inferior. However, the subject does fall squarely in the middle of the range of the assessments per square foot of those comparable properties. This lends support to the Respondent's argument that the subject is equitably assessed.

[46] The Board notes the Complainant's submission that similar properties should be treated in a similar fashion. However, the properties submitted by the Complainant as similar to the subject are, in fact, inferior based on all the evidence presented at this hearing.

[47] The Board also notes the Complainant's submission that the variance between the time adjusted sale price per square foot of the comparable properties he presented and the assessments per square foot of those same properties shows that these properties enjoy an assessment value lower than the market value and that it is only equitable that the subject enjoy the same benefit. The Board notes that *Jonas*, presented in support of this argument, deals with a license fee dispute, not a property assessment dispute. As well, *Decision No. 0098*, also presented in support of this argument, contains different facts and evidence than present in the case at hand. Further, if this variance was presented as a form of assessment to sales ratio (ASR) study, the Board notes that such a study should involve the entire inventory, not a few select properties.

[48] The third issue for the Board to determine involved the appropriateness of the 5% reduction to the subject assessment proposed by the Respondent. This would result in an amended assessment of \$9,413,000.

[49] The Board heard submissions that this proposed reduction was based on an opinion that the subject is new (2011) and that the newest of properties in this industrial inventory seem to have been slightly overvalued. This opinion was formed during conversations with owners and, as a result of those conversations, the 5% reduction was offered to newer properties in the inventory that filed complaints.

[50] The Board asked numerous questions to clarify those conversations and the timing and application of the reductions offered. The Board heard evidence that the 5% recommended reduction was only offered to newer properties in the inventory under complaint.

[51] The Board also considered the submission of counsel for the Respondent during final argument, that while the 5% reduction was still being offered to the Complainant by the assessor, to grant this recommendation would create an inequity. Counsel argued an inequity would arise because the same reduction has not been made available to similar properties in the inventory which are not under complaint. However, the Board does not agree with this argument.

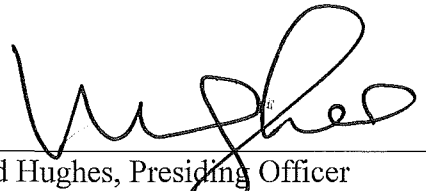
[52] Instead, it is the opinion of the Board that it would be inequitable if the Board were to deny this reduction to the subject. Other properties in the same “newer” category of the inventory that filed complaints have been granted the 5% reduction in assessment. Since the subject forms a part of this same category, the same reduction ought to be granted.

Dissenting Opinion

[53] There was no dissenting opinion.

Heard August 18, 2014.

Dated this 8th day of September, 2014, at the City of Edmonton, Alberta.



Willard Hughes, Presiding Officer

Appearances:

John Smiley
for the Complainant

Cam Ashmore
Jason Baldwin
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 – Complainant’s Brief (36 pages)

C-2 – Rebuttal – (10 pages)

R-1 – Respondent’s brief (80 pages)