

Edmonton Composite Assessment Review Board

Citation: TELUS Communications Inc., as represented by Colliers International Realty Advisors Inc v The City of Edmonton, 2014 ECARB 00825

Assessment Roll Number: 4296653
Municipal Address: 18604 106A Avenue NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$5,850,000

Between:

**TELUS Communications Inc.,
as represented by Colliers International Realty Advisors Inc**

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

**Robert Mowbrey, Presiding Officer
Brian Frost, Board Member
Martha Miller, Board Member**

Procedural Matters

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition.

Background

[2] The subject property is a three building site, located in Edmonton's Poundmaker Industrial neighbourhood. Zoned Public Utility (PU), the subject contains 8.99 acres and has site coverage of 5.27%. The subject contains three buildings, all in average condition:

- a. Building 1 is a 20,614 square foot warehouse, built in 1985 and assessed using the direct sales comparison approach;
- b. Building 2 is 12,480 square feet, constructed in 2005 and assessed using the cost approach; and
- c. Building 3 is 792 square feet, constructed in 2004 and assessed using the cost approach.

[3] The subject's 2014 assessment is \$5,850,000.

Issues

[4] Is the assessment of the subject property in excess of its market value?

Position of the Complainant

[5] The Complainant filed this complaint on the basis that the subject property's assessment of \$5,850,000 exceeds the best estimate of market value. In support of this position, the Complainant presented the Board with a 47 page disclosure package marked as Exhibit C-1.

[6] The Complainant submitted that the subject property is owned and occupied by Telus. It is used in its capacity as a utilities provider. The site is zoned PU (Public Utilities) and as such the property is very limited in its marketability were the current owner interested in sale of the property. Accordingly, the Complainant presented a Cost Approach to value, which it argued was the most appropriate method given the irregular land use zoning.

[7] The Marshall and Swift valuation service was used for the depreciated cost valuation which resulted in a depreciated cost of \$730,242.69.

[8] The Complainant provided information on sales of four PU zoned parcels, ranging in size from 2.22 acres to 11.538 acres and in sale price ranging from \$19,819.82 per acre to \$294,228.59 per acre. On the strength of the most comparable sale being a 2.651 acre parcel at \$294,228.59 per acre located very near the subject property, the Complainant suggested the market value of the subject's 8.99 acres would be \$295,000 per acre, or \$2,650,870.

[9] The Complainant concluded that based on the cost approach to value, the assessment for the subject property should be the total of the depreciated cost of the improvements and the land value, or, (truncated), \$3,381,000.

[10] The Complainant presented four comparable sales to the Board. The comparable sales ranged from 1972 to 1982 for year of construction and averaged 1978. Three were zoned IM (Medium Industrial) and one was zoned IB (Business Industrial). The gross leasable area ranged from 20,450 sq ft to 33,116 sq ft and averaged 27,210 sq ft. The site coverage ranged from 13% to 18% and averaged 15%. The time adjusted selling price per square foot of gross leasable area ranged from \$60.55 to \$178.26 and averaged \$130.79 per sq ft. Given that the average of the sales' ages is greater than the subject property, the average size is smaller than the subject property and the average site coverage ratio is greater than the subject property, the Complainant concluded that the average time adjusted sale price for the subject property should be \$130 per sq ft, or \$4,405,000.

[11] The Complainant utilized the 2014 industrial monthly time adjustment factors from the City of Edmonton.

[12] The Complainant noted that although the assessment per square foot shows the assessed value is equitable, a tax payer has two distinct rights. Based on *Bramalea Ltd. v. British Columbia (Assessor of Area No. 9 – Vancouver)* (1990), 76 DLR (4th) 53 (BCCA) ("Bramalea") the Complainant argued:

- a. a taxpayer has the right to an assessment that is not in excess of that which can be regarded as equitable, and
- b. a right not to be in excess of actual value.

[13] The Complainant submitted that the most persuasive evidence supports a reduction to \$3,381,000, weighted in the cost approach to value, which is not how the subject property is assessed. The Complainant further stated that the use of a direct sales comparison approach to value lends support to the reduction with the lesser of the cost and direct sales valuations having been requested based on the Bramalea decision.

[14] The Complainant utilized more than one approach to value and the comparable sales were within three years of the valuation date. The average of the comparable sales was supportive of the requested assessment.

[15] In addition, the Complainant referred the Board to ECARB 00455, which states:

...in conclusion, the Board finds the Complainant's use of the three valuation techniques to present their case and the fact that all three values are very similar far more compelling than the evidence presented by the Respondent. As a result, the Board finds the assessment to be in excess of market value.

[16] The Complainant stated all its comparable sales were highly similar to the subject property with the exception of zoning and that they provided strong support for the requested reduction to the assessment.

[17] The Complainant requested that the Board reduce the 2014 assessment from \$5,850,000 to \$3,381,000.

[18] After review of the Respondent's disclosure, the Complainant noted some calculations relating to site improvements had been overlooked in the completion of the cost approach and after correction, the Complainant asked that the Board revise the requested reduction in the assessment to \$3,570,500.

Position of the Respondent

[19] The Respondent defended the 2014 assessment by providing the Board with 58 page disclosure package marked as Exhibit R-1.

[20] The Respondent explained that the assessment and similar assessments were prepared using the direct sales comparison methodology.

[21] The Respondent advised the Board that "sales occurring from January 2008 through June 2013 were used in model development and testing." (R-1, p. 34).

[22] Also, "Factors found to affect value in the warehouse inventory, for the 2014 annual assessment, in order of significance are as follows:

- a. total main floor area,

- b. site coverage,
- c. effective age,
- d. condition,
- e. industrial group location,
- f. main floor finished area, and
- g. upper finished area” (R-1, p. 35).

[23] The most common unit of comparison for industrial properties is value per square foot of building area.

[24] The Respondent provided the Board with maps, photographs and assessment details of the subject property.

[25] The Respondent referred the Board to the Assessment Detail Report which stated that while the actual zoning for the subject property is PU, it is effectively zoned IM (medium industrial) based on its use as a warehouse distribution center for Telus. The Respondent concluded that, particularly given the lack of comparable sales for PU zoned land, it would not be imprudent to value the subject property based on its effective zoning of IM.

[26] In support of the City of Edmonton’s assessment, the Respondent presented five comparable sales to the Board, four from Neighborhood 17 and one from the lesser valued neighborhood 22. All were all in average condition. The effective age ranged from 1974 to 2004 and the site coverage ranged from 5% to 12%. The Respondent noted in correction that the site coverage for the subject property is 5.2%. The total building area of the comparable sales ranged from 4,150 sq ft to 22,559 sq ft. Time adjusted selling price per square foot for the total building area ranged from \$219.00 to \$415.00, which supports the assessment of \$284.00 per square foot.

[27] The Respondent critiqued the Complainant’s Marshall and Swift depreciated cost calculation noting that the finished office space, second and third buildings and site improvements had not been included within the calculations, and had they been included, the depreciated cost of the improvements would have been \$1,151,828.67.

[28] The Respondent identified site coverage as a key factor in assessment. Four land sales were analyzed, all zoned IM and in the vicinity of the subject property. The sales, ranging from a time adjusted price of \$313,667 per acre to \$738,326 per acre, occurred between May 2008 and May 2011. The Respondent noted that the market value of the land comparables averaged \$576,342 per acre, higher than the average of \$121,454 as suggested by the Complainant through their land comparables.

[29] The Respondent suggested the value of the subject lands was \$5,178,432.87 based on its costing calculations. This, when added to the amended Depreciated Cost resulted in a value of \$6,330,261.54. (Note: this total is entered as \$5,330,261.54 in the Respondent’s Brief however the Board has noted that the actual calculation results in a total of \$6,330,261.54).

[30] During questioning of the Complainant by the Respondent, the Complainant suggested that the year over year assessment increase was extraordinarily high. The Respondent stated the average increase in that type of property was 14%.

[31] During summation, the Respondent stated there was no systemic problem assessing properties in the northwest area of the City.

[32] The Respondent stated that the comparable sales were all similar to the subject property and supported the assessment. Further, the Respondent added that while the cost approach is not the approach of choice for industrial properties, the depreciated cost once corrected provided further support for the assessment. The Respondent requested that the Board confirm the 2014 assessment of \$5,850,000.

Decision

[33] The decision of the Board is to confirm the 2014 assessment of \$5,850,000.

Reasons for the Decision

[34] The Board noted the Complainant's issue regarding the 48.7% assessment increase during the 2014 assessment year over the prior year. While the Board has a degree of empathy with the Complainant, this does not negate the fact that assessments are independent of any other year. The Board notes that each year's assessment is to be independent of previous assessments, and the mere fact of a large percentage increase without more evidence is not enough information to draw the conclusion that an assessment is too high.

[35] The Board considered the Complainant's cost approach. The Complainant utilized the Marshall and Swift Valuation Service and concluded that the depreciated replacement cost of the improvements was \$730,242.69. The Board noted that the Respondent utilized the same service and concluded that the depreciated replacement cost of the improvements was \$1,151,828.57. The Board further noted that the Complainant corrected the depreciated replacement cost to reflect items totaling almost \$190,000 that had been omitted in the original calculation. The Board concluded that the Marshall and Swift calculations as determined by both parties are unreliable in determining the correct assessment of the subject property, given the wide variances in depreciated replacement cost as calculated by the parties, and as understood by the Board.

[36] The Board considered the Complainant's direct sale comparison approach as it related to the land value within the cost approach to value. Notwithstanding the comparable sales were quite dissimilar to the subject property in terms of size and/or location and that the "price" was in fact the City's assessment of each sale, the conclusion was moot given the Board's position on the Cost approach to value and little weight was placed on this approach.

[37] The Board took note of the Complainant's position that the PU zoning of the subject property had not been correctly recognized in the assessment. The Board noted that the effective zoning is IM. The Board accepts that the zoning and ownership of the subject property is unique, having been originally developed by a City-owned agency that has since been sold into private ownership. The Board accepts that under the current ownership of the subject property, its PU

zoning is grandfathered and that in normal circumstances would most likely be zoned IM. The Board notes that the Complainant provided little evidence that the current PU zoning and the subject property's medium industrial use would be an impediment to the value of the subject property

[38] The Board further noted that the Complainant, in use of the Direct Sales Comparison approach in determining the market value for the subject property utilized IM and IB zoned properties in the secondary approach to value, (the cost approach being the primary Approach). In reviewing the Complainant's comparable sales, the Board noted that with the exception of the first sale which appeared to be an outlier, (and confirmed by the Respondent as having been sold under a 1997 option at a 1997 price), the remaining sales in fact supported the assessment of the subject property after making allowance for the subject property's extremely low site coverage.


[39] Notwithstanding that the Board concluded that the Complainant failed to provide enough evidence to convince the Board that the assessment was excessive, the Board reviewed the Respondent's comparable sales and was satisfied that the assessment of the subject property is a fair representation of the market value of the subject property.

Dissenting Opinion

[40] There was no dissenting opinion.

Heard August 6, 2014.

Dated this 4th day of SEPT., 2014, at the City of Edmonton, Alberta.


Robert Mowbrey, Presiding Officer

Appearances:

James Phelan
Stephen Cook
for the Complainant

Louis Delgado
Sahar Gasman
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

C1 – Complainant’s Disclosure – 47 pages

C2 – Complainant’s Rebuttal – 16 pages

R1 – Respondent’s Disclosure – 58 pages