

Edmonton Composite Assessment Review Board

Citation: Zhanna Alman, DVA Systems Ltd v The City of Edmonton, ECARB 2012-001166

Assessment Roll Number: 1038207

Municipal Address: 6545 99 STREET NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

Zhanna Alman, DVA Systems Ltd

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
John Noonan, Presiding Officer
Brian Frost, Board Member
Jack Jones, Board Member

Preliminary Matters

[1] When asked by the Presiding Officer, the parties indicated no objection to the composition of the Board. The Board members indicated they had no bias in the matter before them.

[2] The Respondent addressed a preliminary matter. During the course of review of the assessment with the Complainant, it became clear that the underground storage tanks were installed in 1989, not 1999 as previously recorded. As a result the depreciated cost of the Underground Storage Tanks decreased. The Respondent had offered a reduction in assessment from \$442,000 to \$397,500 which the Complainant rejected. The Respondent asked that this hearing continue under the Respondent's recommendation to reduce the 2012 assessment to \$397,500.

Background

[3] The subject property comprises a 707.975 square foot convenience store/canopied gas bar and services located on a 5,790.553 square foot site, zoned CNC, in the Hazeldean neighborhood of south central Edmonton. The site flanks 99 Street and is municipally described as 6545 – 99 Street NW. Additionally the Complainant has leased a 2,820 square foot utility lot located immediately east of the subject property from the City of Edmonton. It is assessed separately from the subject and is not part of this appeal. The overall property is leased to Maruti Nandan

Enterprises Ltd. operating as 24 Seven. The 2012 assessment was prepared using the cost approach, viewing the subject as a special purpose property. The land value was established by market sales comparables.

Issue(s)

[4] Is the 2012 assessment of the subject property excessive?

Legislation

[5] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

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.

Position of the Complainant

[6] It is the position of the Complainant that the 2012 assessment is excessive and that it should be reduced to \$200,000. In support, the Complainant submitted evidence in the form of a two page letter to the ARB as well as an Income/Loss Statement for the tenant (Exhibit C-1) and a rebuttal (Exhibit C-2) comprising another two page letter, a letter from the City regarding the leased utility lot and a copy of the 2012 tax notice for the utility lot.

[7] The Complainant stated the property was purchased in 1997 soon after which the tenants defaulted on rent and were evicted. In an effort to attract new tenants, the property was improved in 1998/99 through replacement of the existing above ground improvements with a new convenience store and a new canopy. A total of four different operators have since been in place, the latest of which is the current tenant who has been in occupancy since 2005.

[8] The Complainant stated that in the early 2000’s an ARB ruling resulting from an appeal stated the assessment should consider land and building only, not in comparison to corporate gas station operators. Since then, in response to each year’s assessment notice, the Complainant called the assessor and was able to successfully negotiate a reduction.

[9] The Complainant stated appeals and/or discussions with the assessor were either initiated or contemplated in 2010 and 2011 but were not completed due to family emergencies. During that time period the assessment increased from \$206,500 (2010) to \$283,000 (2011) and for 2012, \$442,000.

[10] The Complainant stated the underground storage tanks were installed in 1989 and according to the Alberta Tank Management Association they have a useful life of 25 – 30 years. The Complainant stated prudence dictated earlier removal, so they are due for replacement in two years at an estimated cost of \$100,000. The Complainant further added that if there is contamination, the cost could be over \$400,000. Further, the Complainant stated there is only 3 years left on the lease, placing long term economic viability of the property in question.

[11] In rebuttal, the Complainant stated the Respondent's first comparable sale was an improved property that has since been renovated. The second comparable is a much larger site than the subject and is now developed with a condominium development indicating greater utility in the comparable due to size and zoning. The third comparable did not require remediation, was in a better neighborhood than the subject and in spite of being smaller than the subject, it offered superior utility due to its orientation and lack of restrictive adjacent utility lot.

[12] Referencing the utility lot, the Complainant stated it has, as evidenced in the letter from the City (as landlord), been valued at \$49,500, or \$17.50 per square foot. This, the Complainant stated, suggested the subject lot should be valued at between \$81,060 and \$101,325. Further, the Complainant stated the Utility Lot constrained development opportunities for the subject.

[13] The Complainant stated realtors have suggested the only way the property would be viable would be to remove the underground storage tanks and canopy, remediate the land and lease the existing building.

[14] The tenant stated his business was failing and a further tax increase could be enough to force the company into bankruptcy.

[15] Both Complainant and tenant stated the current 2012 assessment was excessive and a reduction to pre 2009 levels (\$200,000) would be required to bring consistency to the assessment of the property and safeguard the ongoing viability of the business operation.

Position of the Respondent

[16] The Respondent's position is that the recommended 2010 assessment of \$397,500 is both fair and equitable. In support, Exhibit R-1 was provided.

[17] The Respondent observed that in the assessment complaint process, it is the Complainant's duty or onus to present sufficient evidence to show the assessment is wrong. In the Respondent's view, the Complainant had failed to produce evidence to that effect. Nevertheless, the Respondent elected to present evidence to explain and defend the assessment.

[18] The Respondent provided a copy of the Replacement Cost Detail Report itemizing land value as well as initial building cost details and the depreciated values for the building, canopy and underground storage tanks resulting in the original \$442,000 assessment. An amended detail

report reduced the depreciated cost of the underground storage tanks and resultant assessment to \$397,500.

[19] The Respondent summarized three land sales comparables (Exhibit R-1, page 12) which ranged from \$41.71 to \$46.09 per square foot and averaged \$43.90, suggesting the land portion of the subject's assessment (\$35.69) was supported. The Respondent confirmed the remainder of the assessment was based on depreciated value of the improvements as derived from cost manuals.

[20] The Respondent stated the wide divergence in past assessments to the 2012 assessment was due to a change in the method of calculating assessed value. The Respondent stated past assessments were based on the income approach to value while this 2012 assessment, consistent with the assessment of other similar properties, was based on the cost approach because comparable income data had become very difficult to obtain.

The Respondent stated the cost approach offers a well founded valuation of the land and improvements and requested the 2012 assessment be set at \$397,500 as recommended

Decision

The Board accepts the recommendation and sets the 2012 assessment at \$397,500.

Reasons for the Decision

[21] On the Complainant's side, the Board heard from both the property owner and the tenant who, under the lease terms, is responsible for payment of property taxes. The Respondent expressed empathy for the difficult situation posed by the increase in assessment since 2010. The panel is similarly disposed. The Board took pains to ensure that the concerns and argument of the Complainant were given a full airing. Neither the owner nor the tenant is experienced in presenting a complaint.

[22] The Complainants' evidence was limited. The tenant's income statement demonstrated a less-than-thriving enterprise, but as indicated by the City, gas bar properties are no longer assessed using the income approach. The argument was made that the subject should be assessed at the same land rate as the neighbouring utility lot. However, the Board notes that utility lots allow little if any development. As such, the value of a utility lot has little bearing on the value of a commercial property. Some questions were raised about the sales comparables advanced by the Respondent, but these questions were insufficient to draw the conclusion that the land value as assessed was incorrect.

[23] The owner has had some correspondence with Tank Management regarding the life expectancy of the gasoline storage tanks on the property. The owner has been led to understand that to remove the tanks will incur an expense of some \$100,000. The Board pursued this line of thought, querying the Respondent whether what is assessed as a deeply depreciated asset ought to be viewed as an impending liability that impacts market value. The Respondent advised that as the gas bar is still in operation, its improvements must be assessed like any other similar property. The only respite the Respondent was able to offer the Complainant was that consideration of the expense would be granted the year such work was accomplished. The Board understands this "cost to cure" principle is usually a one-time allowance, and in this case would likely not be applied until at least 2015 when the current lease expires.

[24] While the Board may have an opinion that soon-to-be-removed gas storage tanks could negatively impact current market value, there is no firm or documented estimate of what that impact might be. The Board is also mindful of the principle of assessment equity. Should the Board assign a negative value to the tanks in this case, some four years before expected removal, would be contrary to the treatment of other properties in a similar situation. The Board cannot offer the Complainant preferential treatment. Accordingly, the assessment is set at the recommended amount of \$397,500.

Heard September 10, 2012.

Dated this ____3____ day of October, 2012, at the City of Edmonton, Alberta.

John Noonan, Presiding Officer

Appearances:

Kamal Saini

Zhanna Alman

for the Complainant

Cameron Ashmore

Gail Rookes

for the Respondent