EDMONTON
Assessment Review Board

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NOTICE OF DECISION NO. 0098 167/12

COLLIERS INTERNATIONAL REALTY
ADVISORS INC
3555 - 10180 101 STREET
EDMONTON, AB T5J 3S4

The City of Edmonton

Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on August 13, 2012, respecting a complaint for:

Roll Number	**Municipal Address**	**Legal Description**	**Assessed Value**	**Assessment Type**	**Assessment Notice for:**
4041125		Plan: 8522037 Lot: 3	$2,124,000	Annual New	2012

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.

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cc: LUXOR LAND LTD

Edmonton Composite Assessment Review Board

Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of Edmonton, ECARB 2012-002265

Assessment Roll Number:	4041125
Municipal Address:	
Assessment Year:	2012
Assessment Type:	Annual New

Between:

COLLIERS INTERNATIONAL REALTY ADVISORS INC

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
John Noonan, Presiding Officer
Taras Luciw, Board Member
Tom Eapen, Board Member

Background

[1] The subject property is a 22,710 square foot lot zoned DC2 (Site Specific Development Control Provision), effective zoning CB2 (General Business Zone) and is one of four separately titled properties directly north of the Hotel Macdonald in downtown Edmonton. The four lots constitute a green space, "Frank Oliver Park", and a driveway accessing the hotel. A fifth property is located east of the hotel, here the subject. All five properties comprise 64,130 square feet, and sold in 2009 to the current owner with numerous caveats registered on title(s). All five properties are under complaint, the hearings heard sequentially by the same panel considering identical or very similar evidence. The 2012 assessment was prepared using the replacement cost summary approach to value and the land calculation is based on market sales.

[2] The parties asked the Board to carry forward similar evidence and argument from the first file dealing with the five properties neighbouring the Hotel Macdonald, roll 3814951.

Issue(s)

[3] At the hearing, the Board heard evidence and argument on the following issue:

Should the subject be assessed at a nominal value to reflect its restrictive covenants and use as a landlocked parking lot?

Legislation

[4] 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

[5] The Complainant's written materials were prepared with the understanding that a 25% discount had been applied in the assessment, in recognition of the subject's shape, topography and access. Although the subject was not used as a public park, as were the other four properties neighbouring the Hotel Macdonald, the same nominal value should apply based on restricted use.

[6] The subject property and its neighbours together comprise 64,130 sq. ft. and five separately titled lots. These five lots sold in March 2009 for $5,250,000 or $81.86 per sq. ft. Using the City's time-adjustment factor of .84487 the valuation date market value from that sale is $69.16 per sq. ft. Applied to the subject's 22,710 sq. ft. a market value of $1,570,500 is calculated. Besides the subject sale, two others on 105 and 116 Streets showed time-adjusted sales prices of $92.23 and $87.39 per sq. ft. for lots of 7,500 and 15,888 sq. ft. respectively. All three sales yielded an average of $82.93 per sq. ft. The three sales supported a valuation of $80 per sq. ft. for properties of similar size to the subject. Using that value, and then the City's 25% discount for shape, topography and access, a revised market value of $1,362,500 was indicated.

[7] The Complainant presented twelve equity comparables, most of approximately 7,500 sq. ft. From this group, a subset of six had no improvements, and their land only assessments averaged $29.58 per sq. ft. As these lands carried residential zoning, and the two examples of High Density Residential showed value close to $37 per sq. ft., it was reasonable to conclude that these comparables supported a market value of $40 per sq. ft. for the subject. Consequently, a value of $908,000 would be an equitable assessment for the subject, and after the 25% shape etc. discount, $681,000.

[8] A list of comparable land assessments for other vacant downtown parcels held by the same ownership group demonstrated a range of per sq. ft. assessments from $44.52 - $157.83. A property at 10215 100 Avenue, zoned RMU (Residential Mixed Use) was highlighted. This lot

overlooked the river valley and was potentially the most valuable real estate, permitting high-rise residential development. This lot was vastly superior to all others for which the ownership group was filing assessment complaints. That property complaint had been "withdrawn to correction" with a $56 per sq. ft. assessment agreed. The same $56 per sq. ft. value applied to the subject and after the 25% discount would produce an equitable assessment of $953,500.

[9] The Complainant's exhibits C-2 and C-3 were entered in evidence as common to the complaints for all five of the Macdonald neighbouring lots, including the subject, and another group of seven complaints on vacant lots in the vicinity of 108 Street and Jasper Avenue. These exhibits detailed the encumbrances affecting the Macdonald lots, and included five 2011 CARB decisions relating to these files: two of the Macdonald properties and three of the Jasper-108 Street lots.

[10] The Complainant's rebuttal evidence highlighted that the sales presented by the Respondent were dated, in all but one case four or five years before valuation date, and required time-adjustments of as much as 41%. Reference was made to a previous CARB decision relating to a 2010 assessment. That decision, contained in the City's evidence, had placed less weight on sales dating to 2006 and 2007. Two years later, the Respondent is still using such sales. The most recent sale presented by the Respondent, at $243.60 per sq. ft., was a clear outlier. It was observed that the purchaser owned adjacent parcels and was motivated to acquire this property to complete a land assembly for a proposed high-rise development. Further, that property carried a 2012 assessment of $84 per sq. ft.

Position of the Respondent

[11] The subject property lies directly east of the Hotel Macdonald and is mostly used as a parking lot. To the south of the parking lot fence is a gazebo structure operated by the hotel, and part of the lot extends some way down the river valley. The subject can only be accessed by crossing over at least one other parcel. In recognition of the subject's restrictions as to access, shape and topography, as well as not being on Jasper Avenue, the assessment incorporated a discount of 35% from modeled value resulting in a final per sq. ft. value of $93.20

[12] The Respondent introduced five sales comparables, all with effective zoning CB2, which showed time-adjusted sales prices in a range of $116.57 - $243.60. The average of these sales was $161.52 per sq. ft., supportive of the subject's assessed value of $117.61 per sq. ft. prior to the recommendation to reduce. The Respondent acknowledged in questions that the most recent and highest sale occurred January 2009, three sales dated to 2006 and the last transacted in August 2007. It was noted that two of the sales advanced by the Complainant were problematic: the 105 Street property was found in a 2010 CARB decision to be contaminated with dry cleaning chemical, and the 116 St. property was in the Oliver neighbourhood, not comparable to a downtown property.

[13] Four equity comparables about a block east on Jasper Avenue, vacant land used as parking lots, showed that lots ranging from 4881-11,200 sq. ft. in size were assessed in a range of $150-$161 per sq. ft., or an average $156.38. These equity comparables were superior to those of the Complainant, which were residential-zoned lots.

[14] The four lots to the north of the hotel were under application as of February 2011 for rezoning from DC2(E) to CCA (Core Commercial Arts Zone). Although there was no indication that this rezoning had come into effect as of condition date, December 31, 2011, it would allow the owner significantly greater development options in the future. Exhibits R2 and R3, to be

carried forward in evidence for the subsequent four hearings dealing with the other Macdonald lots, were September 1989 agreements between the City of Edmonton and Canadian Pacific Hotels Corporation, revising 1983 agreements. These agreements allow for the construction of Office Tower 1 on the four lots north of the hotel, and Office Tower 2 on the lot east (the gazebo lot – here the subject). The two towers would be 39 and 29 stories respectively. The rezoning application only applies to the four lots north, the gazebo retaining its DC status. The parties agreed that CCA zoning would be more accommodative of development options.

Decision

[15] The Board confirms the assessment of $2,124,000.

Reasons for the Decision

[16] The parties' evidence shows there are no very good comparables to the lots neighbouring the Macdonald Hotel. They carry a lot of baggage in the form of restrictive covenants. The lot addressed as 9955 Jasper Avenue has some 10 caveats not related to financing. Others of these lots have fewer caveats, but the point remains that there are no good sales or equity comparables with so many restrictions.

[17] Usually the Board is asked to consider the full fee simple interest in a property, as if unencumbered. Here, we have a different story, and the assessor recognizes it, too. While future development will eventually work around the site-specific restrictions, these properties have been "vacant" for a long time. Despite that, the Board cannot accept the Complainant's assertion that these lots should carry a nominal valuation. While there may not be a robust demand today for 39-storey office buildings in Edmonton, that state of demand might not rule in perpetuity. Meanwhile, these properties are assessed at discounts of as much as 60% from what they would ordinarily command. The Board notes that the choice of 60% is somewhat or wholly arbitrary. The Board did not see, nor is it likely easily found, market evidence that supports 60%, 35%, or some other figure.

[18] The best evidence of value before the Board was the sale of the subject and its neighbours in March 2009 for $5,250,000 which produces a time-adjusted value to July 1, 2011 of $4,435,567. As is usually the case, there was no breakdown of that sale price into value ascribed to each separate title. The Board finds that these properties are best viewed as a whole until such time as a further change occurs, such as zoning. While the Complainant points out that the time-adjusted sale price amounted to $69.16 per sq. ft., the Board accepts that some of the parcels are assessed lower and higher. What matters to the Board is the end result.

[19] The Respondent advised that the sum total of the five parcels yielded $4,566,500. The Board employed the same reasoning for all of the five rolls under complaint, that the sale was the best value indicator. However, the Board adjusted its thinking for the smallest of the properties, a 2837 sq. ft. road directly in front of the hotel entrance, dedicated to remain a road. The Board reduced that assessment from $178,000 to $2000, the value of the pavement improvement. Making that adjustment, the value of the five accounts in sum is $4,390,500 or some 99% of time-adjusted sale price.

Heard commencing August 14, 2012.
Dated this 30th day of August, 2012, at the City of Edmonton, Alberta.

John Noonan, Presiding Officer

Appearances:

Stephen Cook, Colliers International Realty Advisors Inc.
for the Complainant

Keivan Navidikasmaei, Assessor, City of Edmonton
Tanya Smith, Legal Counsel, City of Edmonton
for the Respondent