Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2012 ECARB 2134

Assessment Roll Number:	1106061
Municipal Address:	15305 128 Avenue NW
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
Robert Mowbrey, Presiding Officer
Brian Carbol, Board Member
John Braim, Board Member

Preliminary, Procedural and Jurisdictional Matters

[1] Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board advised the parties that the Board had no bias on this file.

[2] During the Complainant's cross-examination of the Respondent, it became apparent that the Board was missing a number of pages with regards to the Respondent's evidence. The Complainant objected and the Respondent stated that the Respondent had not sent the missing pages to the Board. The Board recessed, deliberated and rendered a decision. The Board decided it would only review what had been disclosed to it, and therefore the Complainant would not pursue the line of questioning regarding the undisclosed evidence. The Presiding Officer suggested to the Respondent that it might have been courteous for the Respondent to communicate to both the Complainant and the Board the fact that some of the evidence given to the Complainant would not be presented to the Board.

[3] During the Complainant's rebuttal, the Respondent objected to a number of pages that were included in the Complainant's rebuttal package of evidence; namely pages 15, 17, 19 and 20. The Respondent stated some was new evidence that had not been disclosed, while other pages did not address the Respondent's evidence. The Complainant stated that the rebuttal evidence was not new evidence and the other pages were identical to the Complainant's submission. The Board recessed, deliberated and rendered a decision. The Board decided to allow the entire rebuttal package as evidence as the Board did not

consider the rebuttal package to be new evidence. Some pages in the rebuttal package were identical to those in the Complainant's evidence package.

Background

[4] The subject property is a large warehouse located at 15305 128 Avenue NW. The building has an effective year built of 1977 and is comprised of 173,693 square feet (sf) of main floor space and 10,798 sf of mezzanine space for a total building area of 184,491sf. The site coverage is 32% and the 2012 assessment $11,530,000.

Issue(s)

[5] What is the market value of the subject property?

Legislation

[6] 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

[7] The Complainant filed this complaint on the basis that the subject assessment of $11,530,000 is in excess of market value. In support of this position, the Complainant submitted a 37 page evidence package marked as Exhibit C-1. In addition, the Complainant submitted a 25 page rebuttal evidence package marked as Exhibit C-2.

[8] The Complainant advised the Board that the total building size was inaccurately assessed and the Complainant provided a rent roll for the Board which showed the size should be 178,143sf and not the 184,497sf that was assessed (Exhibit C-1, pages 4 and 30).

[9] The Complainant provided the Board with a map and photographs of the subject property (Exhibit C-1, pages 5-7).

[10] The Complainant advised the Board about assessment and valuation and how the subject property was evaluated by the Complainant. Excerpts from the Complainant's

evidence package regarding the valuation methodology utilized by the Complainant are as follows:

- The income approach recognizes that for many market participants, the primary purchase criteria are the property's ability to generate income. In this approach, the potential income the property is capable of generating is analyzed and then converted into an expression of market value by the application of an appropriate technique. The income capitalization method is based solely upon the conversion of current earnings directly into an expression of market value in much the same way that stocks are valued through the use of price-to-earnings multiplier. In this method, the net operating income for the forthcoming year is capitalized by an overall capitalization rate which represents a typical investor's expectations as witnessed in the sales and listings of similar properties.

- The direct comparison approach examines the cost of acquiring equally desirable and valuable substitute properties, indicated by comparable properties, within the market area. Most commonly, a unit of comparison (i.e. price per square foot, price per suite, etc.) is utilized to facilitate the analysis.

- The direct comparison approach is a relevant valuation technique for the subject property and therefore will be employed to value the subject property.

- The income approach is sometimes referenced as a secondary measure of value for industrial warehouse buildings. It will therefore be utilized as a supporting method in the valuation, as it is a good test for market value (Exhibit C-,1 pages 9-10).

[11] The Complainant presented six sales comparables to the Board that were approximately within 18 months of valuation. The sales comparables were all larger warehouses which ranged in size from 73,000sf to 137,062sf and the site coverage ranged from a low of 9% to a high of 58%. The Complainant stated the three best comparables in terms of age and size would be numbers 2, 5, and 6. These three comparable sales were the most recent so no time-adjustment factors were warranted; however, sales 2 and 6 are zoned IB and are superior to the subject property which is zoned IM. The average selling price per square foot of total building area of the six sales is $64.05. The Complainant stated that if one made adjustments for the different zoning, the resultant average would be $58.64 psf.

[12] In addition, the Complainant advised the Board that with the subject property's significantly larger size, the typical economies of scale would affect the subject market value and necessitate an adjustment downwards for the subject property by at least 20%.

[13] Therefore, the Complainant advised the Board that when the factors of age, site coverage, zoning and size are considered, the resulting market value would be in the $50.00psf range. Consequently, the market value of the subject property, as put forth by the Complainant, would be $8,907,000 truncated. (178,143sf x $50.00) (Exhibit C-1, pages 11-12).

[14] The Complainant presented a chart to the Board that outlined the rationale for the difference in Edmonton industrial sales by zoning between IB and IM (Exhibit C-1, page 23).

[15] The Complainant presented 6 market lease rates for the Board to consider. The leases ranged from $3.23psf to $5.50psf for an average of $4.48psf. The subject property's tenant

roster lease rates ranged from $3.85psf to $4.75psf and the Complainant provided photographs that showed the warehouses from which the market rental rates were derived (Exhibit C-1, page 13-19).

[16] The Complainant provided the Board with a proposed assessment utilizing the lease rate of $4.75psf, a 5% vacancy allowance and a 7.50% cap rate. Based on the corrected size calculated by the Complainant (178,143sf), the income approach values the subject property at $8,722,000. This supports the direct comparison approach of $8,907,000 as requested by the Complainant. The Complainant advised the Board that the 7.50% cap rate utilized by the Complainant was derived from a Colliers International Market Report (Exhibit C-1, pages 20 and 32).

[17] During the Complainant's cross-examination of the Respondent, the Respondent stated that sale comparable number 1 (18507 104 Avenue) was at the upper limit with a time-adjusted sale price (tasp) of $125.70 psf of total building area. A number of additional questions and comments posed by the Complainant to the Respondent were as follows:

- There were not a lot of sales over 120,000 square feet.
- All of the sales comparables had a lot less land than the subject.
- Three of the five sales comparables were much newer than the subject.
- The Respondent stated that the Respondent was simply establishing a bracket of value.
- The Respondent's best sales comparables were numbers 4 and 5 as the age of the building was similar and they were located in the same quadrant.
- Sale 4 is 26% smaller than the subject property.
- Sale 5 is 39% smaller than the subject property.

[18] The Complainant presented a 23 page rebuttal evidence package to the Board marked as Exhibit C-2. The Complainant had a number of comments regarding the Respondent's evidence. The most pertinent of these comments were as follows (Exhibit C-2, pages 8-10):

- Sale 1, at 18507-104 Avenue, is much newer than the subject and the total building size is 64% of the subject.
- Sale 2, at 4103-84 Avenue, is 156 blocks from the subject, much newer than the subject and has exposure to the Sherwood Park Freeway.
- Sale 3, at 7612-17 Street, is 188 blocks from the subject, much newer than the subject, expanded in 2007, and has a sale/lease back.
- Sale 4, at 17915-118 Avenue, is only 73% of the subject's size and is in a superior location than the subject.
- Sale 5, at 16304-117 Avenue, is only 61% of the size of the subject; is IB zoned compared to the subject's IM zoning and the sale comparable was acquired by the lead tenant.

[19] During summation, the Complainant advised the Board that the Complainant had provided two approaches to value: a direct sales comparison with 6 sales, and an income approach, which supported the direct comparison approach. The Complainant concluded that these two approaches were similar.

[20] The Complainant advised the Board that the sales comparables of the Respondent are three decades newer than the subject property. Therefore, the Respondent must rely on the remaining two comparables which have substantially lower values than the subject assessment.

[21] The Complainant stated the subject property had a site coverage of 32% which is very typical in the industrial inventory.

[22] Regarding the market rent, the Complainant provided rental rates for the subject property and other properties in the neighborhood.

[23] The Complainant, having the last word, stated the Complainant had provided two approaches to value that support one another. Therefore, the Complainant requested a reduction of the 2012 assessment from $11,530,000 to $8,907,000.

Position of the Respondent

[24] The Respondent presented the Board with a 60-page assessment brief marked as Exhibit R-1. In addition, the Respondent presented the Board with a 44-page law and legislation package marked as Exhibit R-2. The Respondent also provided the Board with ECARB decision 2012-002049, marked as Exhibit R-3.

[25] The Respondent explained to the Board that the subject assessment and similar assessments were prepared using the direct sales comparison assessment methodology for value. The Respondent advised the Board that the City was mandated to use mass appraisal for assessment purposes. Some of the relevant excerpts of the Respondent's assessment brief are as follows:

- Mass Appraisal Approaches

  - Cost Approach
  - Sales Comparison Approach
  - Income Approach

- All three approaches are applicable to many appraisal problems, but one or more of the approaches may have greater significance in a given assignment (Exhibit R-1, p. 39).

- Income capitalization can be particularly unreliable in the market for commercial or industrial property where owner-occupants outbid investors (Exhibit R-1, p. 39).

- Typically, the direct comparison approach provides the best indication of value for owner-occupied commercial and industrial properties (Exhibit R-1, p. 40).

- An adjustment for market conditions is made if general property values have appreciated or depreciated since the transaction dates due to inflation or a change in investors' perception of the market over time (Exhibit R-1, p. 41).

[26] The Respondent advised the Board that for the 2012 annual assessment the sales comparison approach was employed. This was because there was ample data from which to derive reliable value estimates and only a portion of the inventory was traded on its ability to generate income. A large percentage of industrial property in Edmonton is owner-occupied, and as such has no income attributable to it.

[27] When sufficient valid sales are available, the sales comparison approach tends to be the preferred valuation method.

[28] The Respondent's assessment brief also outlined the following:

- Deriving capitalization rates from comparable sales is the preferred technique when sufficient data on sales of similar, competitive properties is available. Data on each property's sale price, income, expenses, financing terms, and market conditions at the time of sale is needed. In addition, the appraiser must make certain that the net operating income of each comparable property is calculated and estimated in the same way that the net operating income of the subject property is estimated (Exhibit R-1, p. 42).

- Both the income and expense data should be similar to those of the subject. If the objective of the appraiser is to value the fee simple interest, incomes for the comparables analyzed must be at or around the level of market rent (Exhibit R-1, p. 42).

- If there are differences between a comparable property and the subject property that could affect the overall capitalization rate concluded, the appraiser must account for these differences (Exhibit R-1, p. 43).

- It is imperative that the appraiser analyze comparable sales and derive their capitalization rates in the same manner used to analyze the subject property and capitalize its income (Exhibit R-1, p. 43).

[29] An overall capitalization rate provides compelling evidence of value when a series of conditions are met (Exhibit R-1, pages 38-44):

- Data must be drawn from properties that are physically similar to the property being appraised and from similar (preferably competing) markets. Where significant differences exist for a given comparable, its indicators are afforded less weight or may be discarded entirely.

- Sale properties used as sources for calculating overall capitalization rates should have current (date of sale) and future market expectations, including income and expense patterns and likely value trends, that are comparable to those affecting the subject property.

- Income and expenses must be estimated on the same basis for the subject property and all comparable properties.

[30] The Respondent provided the Board with photographs and maps detailing the subject property (Exhibit R-1, pages 5-9).

[31] The Respondent advised the Board the subject property and other similar properties were assessed under the direct sales assessment methodology. The subject property was built in 1977,

is in average condition, and has a site coverage ratio of 32%. The Respondent asked the Board to confirm the 2012 assessment of $11,530,000 (Exhibit R-1, page 10).

[32] To support the City of Edmonton's assessment of the subject property, the Respondent provided the Board with five sales comparables. The sales comparables ranged in effective year built from 1977 to 2007. The total building areas of the sales comparables ranged from 112,594sf to 163,368sf. The site coverage ranged from 34% to 54% and all the sales comparables were in average condition. The time-adjusted selling price per square foot, based on total building area, ranged from $79.93 to $125.70 (Exhibit R-1, page 17).

[33] The Respondent advised the Board that the search for sales comparables had to be expanded, as there were not that many larger warehouses that had sold in the last few years.

[34] The Respondent stated that sales comparables 4 and 5 were the best comparables as they were in the same quadrant of the City and were similar in age and size. The Respondent noted that both sale 4 and sale 5 support the assessment. Detailed sales sheets regarding the sales comparables were prepared by the Network (Exhibit R-1, pages 18-22).

[35] The Respondent provided seven equity comparables to the Board (Exhibit R-1, page 23). The equity comparables ranged in age from 1971 to1986 for effective year built and site coverage ranged from 15-41%. The total building size for the equity comparables ranged from 107,520 to 265,376sf. The assessment per square foot, based on total building area ranged from $54.99 to $81.19. Detailed sheets analyzing the equity comparables were found in R-1, pages 24-30.

[36] The Respondent brought the Complainant's first sales comparable (11340 120 Street) to the attention of the Board. The Respondent stated this sale is not a true real estate transaction and should not be used for valuation purposes. The reason is that this comparable is part of a larger sale of businesses that included a corporate entity and all its assets (Exhibit R-1, page 31).

[37] The Respondent also brought the Complainant's third sales comparable (14345 123 Avenue) to the Board's attention. The Respondent noted that discussions with the purchaser revealed that roof repairs, amounting to $850,000, were needed at the time of sale and the sale was discounted to account for this fact (Exhibit R-1, page 32). The Respondent noted that this sale should be adjusted to account for the roof repairs. Furthermore, an appraisal at $4.8 million supported this fact.

[38] The Respondent provided third party reports to the Board that tracked appropriate industrial land sales comparable to the subject property. The four land sales ranged from $465,132 per acre to $711,920 per acre, with an average of $597,385 per acre (Exhibit R-1, page 51).

[39] Several issues were addressed during the Respondent's cross-examination of the Complainant:

- The Respondent asked the Complainant if the Complainant's sales were validated. The Complainant noted the detailed sales sheets were prepared by the Network. The Respondent advised the Board that the Network does not validate sales and actually has a disclaimer stating that the Network cannot guarantee the validity or accuracy of its information (Exhibit C-1, page 24).

- The Complainant advised the Respondent that its sales comparables numbers 2, 5 and 6 were the best in terms of size, but were still smaller than the subject property.

- The Complainant advised the Respondent and the Board that the Complainant's sales comparables numbers 1 and 4 had the lowest selling price per square foot of total building area at $43.59 and $48.86.

- The Complainant stated that a $4.75 rental rate was used in the Complainant's proposed assessment using the income approach. The Respondent noted that the Complainant's sales comparable number 2 (14604 134 Avenue) had a rental rate of $6.35psf (Exhibit C-1, page 25).

[40] The Respondent referred to its Law and Legislation brief and advised the Board that the burden of proof rests with the Complainant to show the assessment is incorrect (Exhibit R-2, page 18).

[41] During summation, the Respondent stated the direct sales comparison approach is the method the City uses for the subject property and other similar properties.

[42] The Respondent further pointed out that the Complainant's first sale comparable was not a market sale (Exhibit R-1, page 31).

[43] The Respondent stated its equity chart supported the assessment and that the subject property had been equitably assessed.

[44] During its summary, the Respondent provided the Board with a CARB decision (Exhibit R-3) and noted the following for the Board's consideration:

> Accordingly, while the CARB noted that the comparables from both parties were not persuasive, it is the Complainant's responsibility to demonstrate that the assessment is wrong. After eliminating the Complainant's three comparables noted above, the CARB was left with two comparables, both of which demonstrated the same deficiencies (size and age) which the Complainant said was lacking in the Respondent's comparables (ECARB 2012-002049).

[45] Therefore, based on the evidence provided by the Respondent, the Respondent requested confirmation of the 2012 assessment of $11,530,000.

Decision

[46] The decision of the Board is to confirm the 2012 assessment of $11,530,000.

Reasons for the Decision

[47] The Board realizes it has the authority and jurisdiction to hear size disputes. However, without architectural plans/drawings, the Board is most reluctant to be an arbiter in these matters. The rent rolls only paint a picture of the net rentable area and the building may cover a much larger area than what is indicated by the lease information. The Board suggests the Complainant may seek to redress any disputes relating to size by having the Respondent perform a site specific measurement.

[48] The Board is not persuaded by the Respondent's sales comparables. The Board noted the Respondent spent some time explaining the concept of mass appraisal and how assessment valuation was achieved. The Board also noted the wide range of the sales comparables and it appears no adjustment was made to the sales comparables to make them comparable to the subject property.

[49] The Board was not persuaded by the Complainant's income approach. The Board recognizes the income approach appraisal/assessment methodology is an accepted valuation approach. The Complainant utilized the rent roll from the subject property, but the capitalization rate appeared to be from third party reports. The third party reports stated that the Edmonton capitalization rate for the industrial market ranged from 6.75% to 7.5% and the Complainant chose 7.5% without any rationale for choosing it from the range. The Board does not agree that the cap rates are homogeneous throughout the industrial market in Edmonton.

[50] The Board notes that the Respondent stated there is no assessment adjustment between IM and IB zoning.

[51] The Board therefore finds the Complainant's best three comparables (numbers 2, 5 and 6) average $79.81 tasp psf for total building area and this supports the subject property assessment of $62.50.

[52] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. The Board finds that the Complainant's evidence was neither sufficient nor compelling enough to enable the Board to form an opinion as to the incorrectness of the assessment.

Dissenting Opinion

[53] There was no dissenting opinion.

Heard commencing October 4, 2012.

Dated this 29 day of October, 2012, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

Greg Jobagy
Stephen Cook
for the Complainant

Bonnie Lantz
Luis Delgado, Assessor
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.