Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc. v The City of Edmonton, 2012 ECARB 2219

Assessment Roll Number:	1523067
Municipal Address:	11603 165 Street 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
Peter Irwin, Presiding Officer
George Zaharia, Board Member
Howard Worrell, Board Member

Preliminary Matters

[1] At the outset of the hearing, the parties indicated that they had no objection to the composition of the Board. The Board members indicated that they had no bias with respect to this complaint.

[2] There were no preliminary matters.

Background

[3] The subject property is a multi-tenant medium warehouse located in the Norwester Industrial neighbourhood of northwest Edmonton. Built in 1979, the subject improvement (in average condition) is 53,851 square feet in size, of which 15,049 square feet is main floor office space. The lot size is 130,674 square feet (3.0 acres) with site coverage of 41%. The subject is zoned IM.

[4] For 2012, the subject has been valued by the direct sales approach resulting in an assessment of $4,214,500 or $78.26 per square foot.

Issue

[5] Is the 2012 assessment of the subject property too high based on sales of similar properties?

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 provided a 37-page brief marked as exhibit C-1, arguing that the 2012 assessment of the subject property, at $4,214,500 or $78.26 per square foot, was too high. His position was that sales of similar properties indicated that a value of $60.00 per square foot should be applied to the subject (Exhibit C-1, page 8).

[8] In support of this position, the Complainant submitted five sales comparables of similar properties located in northwest Edmonton. The sales occurred between January 2010 and October 2010, with sales ranging from $43.59 to $61.67 per square foot. The comparable properties ranged in size from 33,116 to 84,832 square feet and were zoned IM, IB, and IH. The year of construction of the comparables ranged from 1952 to 1978 and the site coverage ranged from 9% to 58% (Exhibit C-1, page 8). The average value of these five sales comparables was $50.60 per square foot, but recognizing adjustments would have to be made in consideration of age and site coverage, the Complainant requested that a value of $60.00 per square foot be applied to the subject property (Exhibit C-1, page 8).

[9] In support of the reduced assessment using the direct sales approach, the Complainant also provided information using the income approach. Three leases of current tenants were supplied showing lease rates of $4.85 per square foot with a start date of April 2010, and $5.00 per square foot with start dates of October and November of 2006 (Exhibit C-1, page 10).

[10] The Complainant provided five lease rate comparables with start dates ranging from June 2010 to August 2011. Rates ranged from $4.25 to $6.00 per square foot resulting in an average of $5.14 per square foot. The Complainant stated "*However, due to the slightly smaller bay sizes of the comparables, we have elected to INCREASE the rental rate to $5.50 per square foot to recognize the 'economies of scale'*" (Exhibit C-1, page 10). The Complainant also provided pictures of the exteriors of the five lease comparables (Exhibit C-1, pages 11 to 15).

[11] The Complainant submitted a pro-forma utilizing a rental rate of $5.50 per square foot, a vacancy rate of 5%, a structural allowance of 2%, and a capitalization rate of 7.5%. This resulted in a value of $3,138,000, thus supporting the requested reduced assessment of $3,250,000 based on the direct sales approach (Exhibit C-1, page 16). The Complainant stated

that the 5% vacancy rate and the 2% structural allowance were typical values, and that the 7.5% cap rate was supported by a Colliers International cap rate study that showed Edmonton industrial multi-tenant property cap rates ranged from 6.75% to 7.75% (Exhibit C-1, page 28).

[12] The Complainant submitted a 19-page rebuttal document challenging the appropriateness of six of the Respondent's seven sales comparables raising concerns that included dated sales, zoning, site coverage, and location (Exhibit C-2, pages 7 & 8).

[13] The Complainant advised that the sale of the subject property was the best evidence as to the subject's value. This sale had occurred May 21, 2010 and was used by the Respondent in her sales comparables. The Complainant informed the Board that the subject property had sold for a time-adjusted sale price of $3,265,175 ($60.63 per square foot), almost identical to the requested reduced assessment of $3,250,000 (Exhibit C-2, page 7).

[14] The Complainant addressed the issue of 'economies of scale' by quoting information from *The Appraisal of Real Estate, Second Canadian Edition*, Chapter 17.6, which stated, "*appraisers should try to select comparables in the same size range as the subject so that economies of scale do not enter the process*" (Exhibit C-2, page 10).

[15] The Complainant rebutted the Respondent's concerns regarding the Complainant's sale #3, located at 14345 – 123 Avenue NW, that major roof repairs were required with an estimated cost of $850,000 not reflected in the sale price. The Complainant argued that the Respondent had not provided any evidence of the required repair cost, or a statement from the purchaser. As well, the Complainant stated that the Respondent had not provided any evidence that an appraisal of that property had been completed showing an appraised value of $4,800,000. It was the position of the Complainant that, given these unknown circumstances, the appraisal for financing purposes could not be considered as fact (Exhibit C-2, page 11).

[16] The Complainant stated that his sales comparables were more current, having occurred between January 2010 and October 2010, and that this was important since the sales prices needed no or minimal time-adjustments. In the rebuttal document, the Complainant included a decision of a Composite Assessment Review Board dated September 23rd, 2010 that stated "*The Board places less weight on the sales comparables provided by both the Complainant and the Respondent as they date back to 2006 and 2007 and required significant time adjustment*" (Exhibit C-2, page 19).

[17] In conclusion, the Complainant requested the Board to reduce the 2012 assessment of the subject property from $4,214,500 to $3,250,000 based on $60.00 per square foot.

Position of the Respondent

[18] The Respondent submitted a 43-page brief marked as (Exhibit R-1) arguing that the original $4,214,500 assessment of the subject property was fair and equitable. The Respondent also submitted a 44-page Law and Legislation brief.

[19] In support of the position that the assessment was fair and equitable, the Respondent submitted seven sales comparables, including the sale of the subject, all located in northwest Edmonton. The sales occurred between January 4, 2008 and April 1, 2011, selling for time-adjusted sale prices ranging from $60.63 to $95.24 per square foot, resulting in an average of $82.14 per square foot, supporting the $78.26 per square foot assessment of the subject property.

The comparables' improvements ranged in size from 30,752 to 68,815 square feet. Site coverage of the subject, at 41%, fell within the comparables' range of 31% to 46% (Exhibit R-1, page 15).

[20] The Respondent highlighted mass appraisal information included in Exhibit R-1 that supported the direct sales comparison approach. Excerpts from two real estate publications were read (Exhibit R-1, page 6).

i. *"When sufficient valid sales are available, this approach tends to be the preferred valuation method."* IAAO, *Standard on Mass Appraisal of Real Property*, Chicago, Illinois, 2002, section 4.3

ii. *"The Direct Comparison approach is applicable to all types of real property interests when there are sufficient recent, reliable transactions to indicate value patterns or trends in the market. For types that are bought and sold regularly, the direct comparison approach often provides a supportable indication of market value. When data are available, this is most straightforward and simple way to explain and support value opinion."* Appraisal Institute of Canada, *The Appraisal of Real Estate, Second Canadian* Edition, Vancouver, British Columbia, 2002, page 17.3

[21] The Respondent stated that sales occurring from January 2008 through June 2011 were utilized in model development and testing. Factors that affected value in the warehouse inventory were location, lot size, age and condition of the building, main floor space, and the amount of finished main floor space as well as developed upper area (Exhibit R-1, page 7).

[22] The Respondent provided several excerpts from *The Appraisal of Real Estate, Second Canadian Edition* addressing approaches to value, time adjustments, and comparability of factors used to determine value.

i. *Typically, the direct comparison approach provides the best indication of value for owner-occupied commercial and industrial properties* (Exhibit R-1, page 24).

ii. *An adjustment for market conditions is made if general property values have appreciated or depreciated since the transaction dates due to inflation or deflation or a change in investors' perception of the market over time* (Exhibit R-1, page 25).

iii. *Data on each property's sale price , income, expenses, financing terms, and market conditions at the time of sale is needed* (Exhibit R-1, page 26).

iv. *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, page 26).

[23] The Respondent offered criticisms of some of the Complainant's sales comparables.

i. Sale # 1, located at 11310/11340 120 Street, was part of a larger sale of businesses. It was not a true real estate transaction and therefore should not be used for valuation (Exhibit R-1, page 31).

ii. Sale # 2, located at 15715 – 121A Avenue, was not a market value transaction. It was a multiple parcel purchase that included one property with four warehouse buildings and another property with one warehouse building. The sale price of $1,539,731 was not close to the combined assessment of these properties of $5,920,500.

iii. Sale # 3, located at 14345 – 123 Avenue, involved an improvement that required major roof repairs estimated at $850,000 at the time of purchase, and the purchaser confirmed that the property was purchased at a discounted price. Additionally, an appraisal for financing purposes was completed indicating a value of $4,800,000.

iv. Sale # 4, located at 11510 149 Street, was a non-arm's length transfer based on a three-year old option to purchase agreement at well below market value.

[24] In response to the Complainant's use of the income approach to support its direct sales comparison conclusion, the Respondent argued that there was not sufficient information provided to justify the values used by the Complainant in his suggested pro-forma.

[25] In conclusion, the Respondent requested the Board to confirm the 2012 assessment of the subject property at $4,214,500.

Decision

[26] The decision of the Board is to confirm the 2012 assessment of the subject property at $4,214,500.

Reasons for the Decision

[27] Although the Board acknowledges that the Complainant provided sales comparables that are all within one and one-half years of the valuation date, the Board places less weight on the Complainant's sales comparables because of the age discrepancies with most of the comparables compared to the subject, and site coverage that vary significantly from the subject's.

[28] In his own disclosure, the Complainant stated that adjustments would have to be made to account for age and site coverage variations, thereby establishing his requested assessment at $60.00 per square foot, despite the average of his sales comparables being $50.60 per square foot. The Complainant argued that there would have to be adjustments to the Respondent's sales due to site coverage, building size, and superior location. The Board does not agree. It is the position of the Board that the average of the time-adjusted sales prices supports the assessment of the subject property without the necessity of arbitrarily substituting another value.

[29] The Complainant stated that his sales comparable # 2 was the best comparable due to its age being within one year of the subject. However, it has site coverage of 14% compared to the subject's 41% site coverage, and it was part of a multiple parcel purchase. This leads the Board to question the comparability and validity of this sale. Additionally, the Board notes that there is a size discrepancy shown by the two reporting agencies. In the Complainant's disclosure brief, the Network reported the building to be 33,116 square feet in size, while in the Respondent's disclosure brief, Bourgeois and Company reported the building size to be 27,520 square feet.

[30] The Board places no weight on the Complainant's income approach used to support his derived direct sales approach value. The Complainant did not provide evidence as to how the various values used in the pro-forma were derived. The Board is influenced by the direction given in *The Appraisal of Real Estate, Second Canadian Edition*, which states:

i. *data on each property's sale price, income, expenses, financing terms, and market conditions at the time of sale is needed*; and

ii. *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.*

The aforementioned requirements were not provided to support the values used in the proposed pro-forma. Additionally, the Board does not find the pictures of the buildings used for the lease rate comparables to be instructive or supportive of the indicated lease rates.

[31] In the rebuttal document, the Complainant argued that, since the Respondent utilized the sale of the subject in the sales comparables, and that the time-adjusted sale price of $60.63 per square foot was almost identical to the requested $60.00 per square foot, this supported his requested reduction. The Board concurs that the sale of a property may be a very good indication of value; however, the value must be supported by sales of similar properties. Although the Respondent utilized the sale of the subject property as part of the sales comparables, the time-adjusted sale price of the subject is the lowest of the comparables and, compared to the average of all the comparables, the sale price is not supported by the sale of similar properties.

[32] The Board considered the Complainant's concerns with the Respondent's sales comparables due to dated sales, zoning, and site coverage:

i. Regarding dated sales, the Board agrees with the Complainant that sales close to the valuation date would be preferable, but the Board notes that five of the Respondent's sales comparables occurred within one and one-half years of the valuation date. In fact, three of the sales occurred in 2011, while all of the Complainant's sales occurred in 2010. The Board acknowledges the direction provided in *The Appraisal of Real Estate, Second Canadian Edition*, which states "*An adjustment for market conditions is made if general property values have appreciated or depreciated since the transaction dates due to inflation or deflation or a change in investors' perception of the market over time*."

ii. Regarding the zoning issue, the Complainant agreed to exclude the zoning chart shown on page 14 of Exhibit C-2 since this chart had not been included in the disclosure brief to which the Respondent would have had a chance to prepare a response.

iii. Lastly, regarding site coverage, the Board is rather puzzled as to why the Complainant raised concerns with two of the Respondent's sales with site coverages varying 7% and 10% from the subject. The Complainant presented sales comparables with site coverages varying 32%, 27% and 17% from the subject.

[33] The Board places little weight on the Complainant's reference to a previous CARB decision that spoke to dated sales for two reasons:

i. this Board is not bound by a previous CARB decisions; and

ii. in this case, five of the Respondent's sales comparables were within the same time period used by the Complainant.

[34] The Board places greatest weight on the Respondent's sales comparables because

i. the building sizes reflect the building size of the subject quite nicely;

ii. five of the sales occurred in 2010 and 2011, making them more current than the Complainant's;

iii. the ages of the comparables from 1971 to 1980 were very close to the subject's age of 1979; and

iv. the site coverage with a range of 31% to 46% better reflects the 41% site coverage of the subject.

The average time-adjusted sales price of $82.14 per square foot supports the subject's $78.26 per square foot assessment. Even the median of these seven sales at $79.51 per square foot supports the subject's $78.26 per square foot assessment.

[35] The Board is satisfied that the Respondent adhered to the directions provided in *The Appraisal of Real Estate, Second Canadian Edition* with regards to different approaches to value and time adjustments. Data must be drawn from properties that are physically similar to the property being assessed.

[36] The Board is persuaded that the 2012 assessment of the subject property at $4,214,500 is fair and equitable.

<u>Dissenting Opinion</u>

[37] There is no dissenting opinion.

Heard November 13, 2012.

Dated this December 6, 2012, at the City of Edmonton, Alberta.

Peter Irwin, Presiding Officer

Appearances:

Stephen Cook
Greg Jobagy
for the Complainant

Suzanne Magdiak
Tanya Smith, Legal Counsel
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.