EDMONTON
Assessment Review Board

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NOTICE OF DECISION

Edmonton Composite Assessment Review Board (The Board)

Citation: Colliers International Realty Advisors Inc. v The City of Edmonton, 2012 ECARB 2303

Assessment Roll Number: 4296653
Municipal Address: 18604 106A 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
Lynn Patrick, Presiding Officer
James Wall, Board Member
Brian Hetherington, Board Member

Preliminary Matters

[1] Both of the parties indicated that they had no objection to the composition of the Board. Each of the Board members indicated that they had no bias with respect to this matter.

Background

[2] The subject property is a 391,432 square foot (sq. ft.), two-building site located in the Poundmaker Industrial neighbourhood of west Edmonton. The first building, constructed in 1985, contains 20,614 sq. ft. of main floor space. The second building, constructed in 2005, contains 12,480 sq. ft. and the property is assessed using the direct comparison approach. Zoned public utility, with an effective zoning of IM, the subject property has a site coverage of 5.27%. The property is owned and operated by Telus Communications Inc.

Issue

[3] Is the assessment of the subject property for 2012 correct?

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.

<u>Position of the Complainant</u>

[5] The Complainant presented the Board with a 47-page brief (C-1), which contained,

a. an Assessment Summary;

b. property data, including photographs of the buildings and aerial views of the subject;

c. an outline of three approaches to the valuation methodology, including charts and details of the comparable properties; and

d. a conclusion, requesting a Market Value assessment, based on a PU zoning of the site, of $1,797,000.

[6] Appendices to the brief included,

a. details of 14 comparable properties;

b. extracts from the Colliers Canada Cap Rate Report of Q2, 2011;

c. the City of Edmonton assessment details for the subject property; and

d. a reprint of the City of Edmonton's Zoning Bylaw 12800 outlining the purposes and uses of Public Utility zoned lands.

[7] The Complainant told the Board that the City's assessment of the subject property for 2012 showed a 35.2% increase over the previous year. He added that the buildings were used for equipment storage.

[8] The Complainant presented a chart of seven Comparable Properties, using the Direct Comparison approach (C-1, pp 13-14.) He said this was the best method for the subject's

assessment and that these comparable sales were the most appropriate, as they had all been concluded between Sept 2010 and April 2011. He suggested that the proximity of these sales to the assessment date of the subject property, July 1, 2011, made them very reliable indicators of value. The construction year of the comparables ranged from 1965 – 1981, compared to the subject's construction years of 1985 and 2005 for the two buildings.

[9] The site coverage of the comparable properties ranged from 14 – 50%, showing an average of 36%, compared to the subject property's 8%. The price per sq. ft. of the sales averaged $74.17, compared to the subject's assessment of $150.67 per sq. ft.

[10] The Complainant told the Board that comparables # 5, 6 and 7 were the best and these three showed an average sale price per sq. ft. of $93.00.

[11] The Complainant told the Board that most appraisers use an adjustment of 10% to reflect excess land values and he had used this figure in calculating the requested value of the subject property, creating a total assessment of $110 per sq. ft. He added that there is also normally a 10% reduction for the value of the building at the rear of the property, and he calculated this to be $104 per sq. ft., creating a total value of $3,458,000.

[12] The Complainant also presented the Board with a list of six properties to illustrate recent comparable per sq. ft. lease rates for warehouse properties (C-1, p 14.) These ranged from $8.75 to $10.50 per sq. ft., creating an average of $9.61 per sq. ft.

[13] In presenting the Board with an Income Approach, resulting in a proposed truncated assessment of $3,741,500 (C-1, p 20), the Complainant suggested a per sq. ft. assessment of $113.06. This figure was reasonably close to what he suggested as the more reliable Direct Sales Approach, which had produced an assessment of $3,458.000.

[14] The Complainant also presented the Board with two charts illustrating land values. The first chart of three Urban Service (US) land transactions showed an average lot size of 4.31 acres and an average price of $193,000 per acre. The second chart of four agricultural (AG) properties had an average lot size of 6.95 acres and an average price per acre of $189,000. He added that both sets of sales suggested that a reasonable market value for the subject would be in the $200.000 per acre range, resulting in a value of $1,797,000.

[15] In closing, the Complainant said that his evidence suggested a valuation of $3,458,000, based on the Direct Sales Approach, supported by an Income Approaches to Value. He added that, "in the alternative, recognition should be given to the unique and atypical zoning of the subject property and the market value be reduced to $1,797,000 for its PU zoning."

Position of the Respondent

[16] The Respondent provided the Board with an 81-page brief (R-1). The brief contained photographs of the subject, maps and comparable data used in determining its 2012 assessment.

[17] The Respondent provided six improved sales comparables (R-1, p 23) together with confirmation of sales from third-party sources. These sales comparables indicated relatively low site coverages (5-24%). The subject property's site coverage was reported at 5%. The sales took place between October, 2008 and December, 2010 at a time-adjusted sales price range of

$117.43 per sq. ft. to $391.60 per sq. ft. The subject property is assessed on the basis of $150.74 per sq. ft. of main floor area.

[18] The Respondent, in response to questioning, indicated that the best comparable was located at 16718 121 Avenue, and had a building area of 10,220 sq. ft. on a 213,132 sq. ft. site (5% site coverage). This property sold October 3, 2008 at a time-adjusted rate of $391.60 per sq. ft.

[19] The Respondent informed the Board that the two buildings, which comprise the subject property, are valued separately and the values are combined to generate the total assessment.

[20] The Respondent confirmed that all sales used by the City are validated by the Assessment Department prior to their use as comparables.

[21] The Assessment Brief contained responses to the Complainant's disclosure. In these responses, the Respondent questioned the validity of the Complainant's sale #1 (C-1 p 13) and claimed this property represented one in a four-property acquisition by the purchaser.

[22] The Respondent said that discussions between him and the vendor in the Complainant's sale # 2 (C-1, p 13) revealed that the vendor was under financial distress at the time of the sale. Therefore in the Respondent's opinion, the sale would not be a valid indicator of value.

[23] The Respondent presented portions of a Colliers Second Quarter 2011 Market Report (R-1, pp 49 and 53) which dispute the Complainant's estimate of land value.

[24] At R-1, page 55, the Respondent attempted to show how the adjusted values affected three of the Complainant's sales comparables that the Complainant had identified as being his most appropriate comparables (shown as sales #5, #6 and #7 on C-1, p 13). To show the impact of the subject property's low site coverage, the Respondent's chart had adjusted the land sizes of the three properties upwards. The result of these increases changed the time-adjusted average sales price of these sales from $89.00 per sq. ft. to $202.00 per sq. ft. The subject property is assessed on the basis of $150.74 per sq. ft.

[25] The Respondent informed the Board that the owner of the subject property, Telus Communications Inc. is a public company and uses the property as warehousing and vehicle parking, not for public utility purposes.

[26] In response to questions, the Respondent indicated that the 35% increase in the subject property's assessment between 2011 and 2012 was a result of the property being assessed in 2012 by Direct Comparison, not by the Cost Approach, which had been used in previous years.

[27] The Respondent asked the Board to confirm the 2012 assessment at $4,988,500.

<u>Rebuttal by the Complainant</u>

[28] The Complainant presented the Board with a 20-page rebuttal document (C-2), presenting,

a. observations on the Respondent's six sales comparables, and questioning their reliability;

b. an outline of concerns relative to economies of scale;

c. an e-mail exchange between Greg Jobagy of Colliers and David Janssens regarding the sale of property at 14308 118 Avenue, the credibility of which had been challenged by the Respondent;

d. extracts from "The Appraisal of Real Estate" document published by the Appraisal Institute of Canada and Appraisal Institute; and

e. a copy of Assessment Review Board decision 252/10, which indicated that less weight was given to sales requiring a significant time adjustment.

[29] The e-mail exchange regarding the sale of property at 14308 118 Avenue indicated that the purchaser of the property felt that the sale had been completed and was representative of the market.

Surrebuttal by the Respondent

[30] The Respondent sought permission to present a Surrebuttal package. The Board determined that only 2 pages would be appropriate responses to the Rebuttal document and accepted them.

[31] The 2 pages contained the City of Edmonton's analysis of the sale at 14308 118 Avenue (R-3), which showed City-recorded details of the transaction and a note prepared by the City Assessor, which said,

> Spoke to purchaser and vendor, seller was under financial duress, long term vacancy and under market lease rates in place. Vendor – Stav Adivi 647-680-1800, and buyer David Jensen 403-690-6707. Do not use in model, audit or court.

[32] Based on these conversations, the Respondent asked the Board to not place any weight upon this particular comparable transaction.

Decision

[33] The assessment of $4,988,500 is confirmed.

Reasons for the Decision

[34] The Board considered all of the evidence and submissions presented by both parties.

[35] The Complainant's proposed assessment of $1,797,000 is based upon an alternative approach that purports to deal with comparable land sales of property zoned as PU or similar, such as US or AG zoning. The US zoned land sales used as comparables are, in the view of the Board, subject to some comment. The Leduc site, being #1 in the table (C-1, p 21 with details from The Network Report on p 31), is noted to have been made between the City of Leduc and the Daystar Christian Assembly Ltd., being for religious purposes. The #2 comparable is an acquisition by the City of Edmonton for road widening and an LRT station. The usage will be permissible under the urban services zoning. Comparable #3 is a sale of an odd shaped parcel for consolidation with adjoining land and subsequent subdivision, which was purchased for commercial purposes and will likely be rezoned for such purpose. The subject is a parcel zoned PU and was historically used for the purposes of the telephone and telegraph services, which resulted in Telus Communications Inc.'s ownership, an industrial user. For these reasons, the

first two comparables are not valid and the third comparable, on its own, does not establish the market value.

[36] The second set of comparables is of four lands zoned AG. The purchasers range from two investor/developers to the Province of Alberta for a utility corridor and the City of Edmonton for parkland use. The Board finds that these comparables are less persuasive than the first set of comparables. The latter two purchases are for public purposes and subsequent rezoning will be for public use. The second sale is a judicial sale and the first sale is a sale to a developer. Both of these parcels have Area Structure Plans that indicate residential use and not industrial usage.

[37] There is very little, if anything, in these comparables to support the position that there is value to be determined for PU land. Rather, the determination is that it is the potential use that clarifies the value. In the case of the subject, the PU zoning is a leftover item of the transition of the public telephone service to the present publicly traded, corporate owner as part of the privatization of that utility. The change in zoning to an industrial designation is not a matter of merit for the Board to consider. The land sales comparables are all vacant land sales, although older improvements continue to exist on two sites, the improvements are considered to have no value.

[38] The Complainant’s next alternative value is based upon the Direct Sales Approach. Of the seven comparables presented (C-1, p 13), he relies on sales #5, #6 and #7 as being the most appropriate to support his submission. Those sales, with the adjustments described in the presentation projected a value of $104.50 per sq. ft., realizing a value for the subject of $3,458,000. The adjustments are +10% for site coverage, +10% for the newer second building and -5% for the rear location of the second building. No source for the use of those adjustments was provided to the Board. As previously explained, the Board has rejected the Complainant’s contention that the comparables are superior because they are located and zoned as industrial properties, different than the subject, being zoned PU. Without adjustments that are verified, those comparables are not persuasive to the Board.

[39] The third approach taken by the Complainant is an Income Approach, contended by the Complainant to support the Direct Sales Approach value. The pro forma income analysis contains numbers contended by the Complainant to be typical values for net rent of $9.50 per sq.ft., vacancy of 5%, structural allowance of 2%, unrecovered operating costs of $15.00 on 1,655 sq. ft. and a 7% cap rate. The only evidence provided for these values is from charts of lease rates or industry reports prepared by the agent of the Complainant and supplied to the Board without verification of sales, leases or listings.

[40] The Board agrees that the correct approach for the subject is the Direct Sales Approach and consequently gave little weight to the Complainant’s comparables or the adjustments employed to the sales.

[41] The Respondent presented six sales comparables, three of which have similar site coverage to the subject. In the evidence backing the sales, it is noted that, although the TASPs are considerably higher than the other values and those of the Complainant, it appears that they represent usage compatible to that of the subject. Large land components with low site coverage are key to the higher sale prices, thus making them more comparable. The assessment is made upon the basis of an effective zoning of IM; the existing PU is an anomaly, easily remedied by re-zoning.

[42] This consideration is supported by the verbal evidence of the Respondent, who had visited the property and found that it was used for warehouse storage, and office and vehicle parking. There is no evidence, apart from a transmitter in one small corner of the lot, of any public utility service.

[43] Based upon the Board accepting the Respondent's evidence and position, supported by its three sales comparables of low ratio sites, the assessment ought to be confirmed.

[44] The rebuttal and surrebuttal materials are of little assistance to the Board in reaching its decision.

<u>Dissenting Opinion</u>

[45] There was no dissenting opinion.

Heard on September 20, 2012.

Dated this 30 day of September, 2012, at the City of Edmonton, Alberta.

Lynn Patrick, Presiding Officer

Appearances:

Greg Jobagy, Colliers International Realty Advisors Inc
for the Complainant

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.