Edmonton Composite Assessment Review Board

Citation: Hue Tran v The City of Edmonton, 2012 ECARB 2398a

Assessment Roll Number:	9986895
Municipal Address:	10741 98 Street NW
Assessment Year:	2012
Assessment Type:	Annual Revised

Between:

Hue Tran

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Dean Sanduga, Presiding Officer
Dale Doan, Board Member
Petra Hagemann, Board Member

Legislation

For ease of reference, the legislation referred to in this decision is listed in Appendix "A".

Preliminary Matters

[1] At the outset of the hearing the parties indicated they had no objection to the composition of the panel, and the Board members indicated that they had no bias to declare with regard to this matter.

[2] The Complainant then raised a preliminary issue and requested that the hearing be adjourned. The reason given was that the owner of the subject had difficulty understanding why the assessment had tripled over the previous year.

[3] The Respondent objected to the adjournment since a request for postponement had been denied two days prior to this hearing (*Hue Tran v. The City of Edmonton*, 2012 ECARB 2398, Postponement Decision – November 28, 2012).

[4] The Board stated that pursuant to s. 15(1) of the *Matters Relating to Assessment Complaints Regulation* (*MRAC*), there were no extraordinary circumstances which would allow the Board to adjourn this hearing to a later date. Furthermore, no disclosure had been provided by the Complainant by October 22, 2012, the deadline calculated pursuant to s. 8(2) of *MRAC.*

[5] The Complainant advised the Board that some disclosure had been provided as per an email dated August 13, 2012 (C-1). This document referred to the rezoning of the subject property. It also stated the City had requested that the Complainant demolish the improvement

on the property. This, they were told, would not have a negative effect on their property taxes. The email did not state who at the City of Edmonton made this representation to the Complainant.

[6] The Board reiterated the difficulty it faced with adjourning the hearing based on lack of disclosure. A postponement or adjournment, even if merited, could not remedy the Complainant's failure to disclose evidence.

[7] The Complainant then changed his request from an adjournment to an abridgment in an attempt to obtain new disclosure dates.

[8] The Board referred to s. 10(3) of *MRAC*, which states that an abridgement can only be granted if all parties agree. Section 10(3) of *MRAC* would require written consent from the Respondent before an extension of the disclosure deadline could be granted, and the Respondent stated the City was not prepared to give this consent.

[9] The Complainant stated that agreeing to change the disclosure dates would not be prejudicial to the City. Since the Complainant did not understand the reasoning behind the increase in the assessment until they received disclosure from the City, it was submitted they could not prepare their case in time.

[10] The Respondent strongly objected to this, stating that in fact there would be prejudice to the City, but this was not the most important factor to be considered. The test under s. 10(3) of *MRAC* does not refer to prejudice, only to consent, and the Respondent stated it would not give consent to extend disclosure dates in this case. Given the requirements of s. 10(3), prejudice on the part of the Respondent did not actually have to be shown, and consent could be withheld without reason.

[11] The Respondent also informed the Board that they had not received a request to provide information to the Complainant under s. 299(1) of the Municipal Government Act (*MGA).* A request for information under this section of the *MGA* would have obligated the Respondent to provide the Complainant with "sufficient information to show how the assessor had prepared the assessment". Such a request may have helped the Complainant understand the nature of the property assessment.

[12] After the agent for the Complainant argued that he did not "know the case to be met", the Respondent stated that the onus rests with the Complainant to establish a case as to why the assessment of the subject is incorrect. The Respondent also suggested that the Complainant was merely trying to shift the onus onto the City, however incorrectly. The Respondent stated that while they had submitted their disclosure to all parties, they were not obligated to present it at the hearing since no disclosure had been provided by the Complainant.

[13] The Complainant referred again to the zoning change and stated that someone in the planning department had assured the property owner that their taxes would not increase if the building was demolished. The Complainant did not present any evidence to support this. The Board then advised the Complainant that it has no jurisdiction to deal with tax increases, only assessments.

Decision on the Preliminary Matter

[14] The decision of the Board is to deny both the adjournment and the abridgement requests.

[15] The Board finds that the request for an adjournment is merely an attempt to obtain new disclosure dates, and is therefore not an exceptional circumstance as required by s. 15(1) of *MRAC*.

[16] Section 8(2)(a) of *MRAC* provides that complainants must disclose their documentary evidence to the Respondent and the Composite Assessment Review Board at least 42 days before the hearing date. The Notice of Hearing was sent on September 18, 2012 to both the property owner and the property owner's agent. This Notice clearly indicates that the Complainant's disclosure must be filed with the ARB and the Respondent on or before October 22, 2012. The Complainant's agent did not allege, nor did he provide evidence to suggest that this hearing notice was not received.

[17] The Complainant's argument that evidence could not be submitted at this date because they did not yet know the case to meet is without merit. As correctly argued by the Respondent, the onus is on the Complainant to establish a case to meet. The Board notes that establishing a case to meet is accomplished through the proper disclosure of evidence by the date stipulated in the Notice of Hearing. There was no evidence before the Board to suggest that either the Complainant or the Complainant's agent were unaware of the disclosure deadline. No attempt was made to address this issue until the Complainant's lawyer requested a postponement on November 21, 2012 (see Postponement Decision).

[18] The Board also finds that pursuant to s. 10(3) the Respondent was not obligated to consent to an abridgment of the Complainant's disclosure date, which would have effectively given the Complainant more time to provide disclosure. Prejudice, as argued by the Respondent, does not form a part of the s. 10(3) analysis. The Board agrees. The Board also notes that an abridgement under s. 10(3) would not have the effect of giving the Complainant a new disclosure date beyond the scheduled hearing date, which is what the Complainant would need to be able to introduce evidence at this stage.

[19] The Board also notes that s. 9(2) of *MRAC* states that it must not hear any evidence that has not been properly disclosed in accordance with s. 8 of *MRAC*. In the absence of any evidence from the Complainant, the Board finds that the Complainant has not satisfied the burden of proof and the complaint could be properly dismissed on this basis.

[20] However, the Complainant requested that the hearing proceed notwithstanding the disclosure issue, and that they be given an opportunity to cross-examine the Respondent on its testimony and written evidence. The Respondent agreed to present its evidence as a courtesy to the Complainant, and in an effort to help the Complainant to fully understand the reasoning behind the increase in the 2012 assessment.

[21] The Board agreed to proceed with the merit hearing, however, reminded the Complainant that no evidence was to be introduced and only questions pertaining to the Respondent's evidence would be allowed.

Background

[22] The subject property is an unpaved vacant lot located at 10741 98 Street NW in the McCauley neighborhood. The subject property is a corner lot, it is 3,789 square feet in size, zoned CB2, with an effective zoning of CB1.

[23] The subject property has been assessed using the sales comparison approach to value resulting in a 2012 assessment of $288,500.

Issues

The Complaint form indicated the following issues:

- Is the current assessment of the subject correct?
- Is the current assessment class correct?
- Is the current assessment correctly reflective of the type of the property?

Position of the Complainant

[24] The Complainant noted that an email had been sent to the Assessment Review Board on August 13, 2012 (C-1) advising that Mr. Gordon Honey would be assisting the owners of the subject property in the appeal. The reason stated for the appeal was that as per the City of Edmonton's request, the Tran family had demolished the improvement on the subject property. The City had advised the Complainant that this would not have a negative effect on their property taxes. The Tran family objected to what they interpreted as the rezoning of the subject property. The effect of demolishing the improvement, as indicated in the email, was an increase in taxes by more than five times the previous year's amount.

[25] In his cross-examination of the Respondent, the Complainant's agent enquired about the reason for the dated sales comparables, the most recent one having been sold in August 2008. When the Respondent explained that these were the only sales available in the area of the subject, the Complainant suggested that this may have something to do with the deterioration of the neighborhood and the negative effect this has had on market value. The Respondent objected to this line of questioning as it suggested the introduction of new evidence.

[26] The Complainant asked if the Respondent had inspected the subject property, to which the assessor replied, "yes, just yesterday". The Complainant continued to suggest that most successful properties in the subject's area are of mixed-use (i.e. commercial and residential), and suggested that they are likely assessed taking both uses into account as should be the case in the subject's assessment. The Respondent replied that the zoning and assessments of other properties were irrelevant. Since the subject is a vacant parcel of land, zoned CB2, it must be assessed as such.

[27] The Complainant tried to introduce pictures of properties in the vicinity of the subject to show that the Respondent had ignored information about the McCauley area, such as the existence of mixed-use properties and the deterioration of the neighborhood. This was construed as new evidence and the Complainant was reminded to keep his questions focused on the evidence provided by the Respondent.

[28] The Complainant referred to R-1, pages 4-6, Merits of the Matter, which referred to the history of the subject property. In 2010 safety codes officers began an investigation of the property, and it was determined that since it had fallen into significant disrepair the building should be demolished. In 2011 the City ordered the demolition of the residential structure. As of December 2011, the property was a vacant parcel of land and the assessment department was

duly notified. This resulted in the property reverting to its original CB2 (commercial) zoning, triggering an amended assessment notice.

[29] Discussion ensued regarding the permitted "residential" use (*MRAT* s. 11) and the property's actual CB2 "commercial" use. The Complainant suggested that the subject's use is part way in between the two and should be assessed as such (i.e. mixed-use). The Respondent replied that once the improvement had been removed from the property the exception respecting the permitted use no longer applied and the property had to be assessed at market value and as CB2-zoned (*MRAT* s. 11).

[30] The Complainant questioned the Respondent in respect to the sales and equity comparables provided, suggesting that they were not similar to the subject. The Respondent advised that they were all vacant parcels of land, zoned CB2, and had location and traffic counts that were similar to the subject.

[31] The Complainant tried to introduce pictures of improved properties that had been fenced, however this evidence was disallowed.

[32] The Complainant asked if the Respondent applied a factor to reduce the assessment because there are no neighbouring businesses and therefore no foot traffic in the vicinity of the subject. The Respondent replied that there is a restaurant close by and no deductions had been applied for shape, traffic, services or anything else.

[33] In summary the Complainant suggested that the subject has little or no value due to the area in which it is located. The Complainant also suggested that there was nothing obligating the Respondent to assess the subject as a commercial property, and that in fact the language of the legislation is permissive. The Complainant suggested that the Respondent had some discretion and could choose to assess the property as something other than completely commercial. The Complainant is of the opinion that the subject should not be assessed as a commercial property until such time as development warrants this.

Position of the Respondent

[34] The Respondent presented a 49-page assessment brief (R-1) and a 44-page Law and Legislation document (R-2) arguing that the current assessment of $288,500 is fair and equitable when compared to sales and assessments of similar properties.

[35] In support of this position, the Respondent submitted two corner lot sale comparables located in the McCauley neighborhood. The sales occurred on July 29, 2007, selling for time-adjusted sale prices of $72.12 and $80.67 per square foot. This resulted in an average of $76.40 per square foot, supporting the $76.13 per square foot assessment of the subject property. The comparable properties were 5,963 and 9,529 square feet, and were zoned CB2 (R-1, page 13).

[36] The Respondent also submitted four interior lot sales located in the McCauley neighborhood. The sales occurred between April 11, 2007 and August 18, 2008. The time-adjusted sale prices ranged from $58.29 to $74.53 per square foot, resulting in an average of $67.75 per square foot. The comparable properties ranged in size from 2,462 to 6,087 square feet and were zoned CB2 or DC1 (R-1, page 13).

[37] To demonstrate that the assessment of the subject property was equitable, the Respondent submitted five equity comparables of CB2-zoned properties. One of the equity comparables is

on a corner lot and four are on interior lots; all are located in the McCauley neighborhood. The equity comparables were similar in size to the subject, ranging from 3,280 to 3,353 square feet. The subject is 3,789 square feet. The corner lot was assessed at $77.07 per square foot, and the interior lots were assessed from $68.43 to $68.68 per square foot (R-1, page 13).

[38] The Respondent stated that there were several reasons why the subject property could not be assessed as residential. As required by the *MGA*, properties must be assessed fairly and equitably based on their physical characteristics. Since the demolition of the house, the subject no longer enjoyed its non-conforming, legal designation, which permitted assessment as a residential property. To assess the property any other way would unjustifiably shift the tax burden to other taxpayers.

[39] The Respondent further stated the City has to follow the law, and advised the Board that the subject property had been zoned commercially since the 1990s. As such, the owners had enjoyed the benefit of the property's non-conforming use for years. This legal, non-conforming use, along with the corresponding reduced assessment, ended once the building was demolished. Unfortunately, this also triggered a change in the mill rate, which the Respondent acknowledged was an added burden for the property owner. However, regardless of these unfortunate circumstances, the Respondent was bound to apply the *MGA* and its underlying regulations and could not make exceptions for the Complainant.

[40] The Respondent also presented a traffic count map (R-1, page 27), which the Respondent argued helped to support the equity analysis. Based on this map, the Respondent suggested that traffic in the vicinity of the comparables was similar to traffic in the vicinity of the subject. This, the Respondent argued, also suggested the comparables could not be discredited.

[41] In summary, the Respondent suggested that the Complainant had failed to meet onus. By failing to disclose any evidence in support of a reduction in the 2012 assessment, the Complainant had failed to prove that the assessment was incorrect. However, if the Board felt onus had shifted, the Respondent stated its evidence still supported the assessment.

[42] Also in its summary, the Respondent referred to further reasons that would support the Board's dismissal of the complaint. In the Respondent's view the complaint form was insufficient in that it did not provide reasons for the complaint. The Respondent again stated that the Complainant had failed to meet onus.

[43] The Respondent requested the Board confirm the 2012 revised assessment of the subject property at $288,500.

Decision

[44] The decision of the Board is to confirm the 2012 assessment of the subject property at $288,500.

Reasons for the Decision

[45] Although the Board was not obligated to proceed with the merit hearing due to the Complainant's lack of disclosure of evidence, in the interest of fairness to all parties, the Board elected to allow the Respondent to present its evidence and to allow the Complainant the opportunity to cross-examine the Respondent on its evidence.

[46] The Board is unable to place any weight upon the Complainant's verbal position since it was not supported or substantiated by evidence. Nor could the Board put any weight on the evidence the Complainant attempted to admit in cross-examination of the Respondent. The Board finds that the Complainant's failure to disclose any evidence was fatal to its position. The Board also again notes that the Complainant and the Complainant's agent were properly notified of the disclosure date of October 22, 2012.

[47] The Board places no weight on the Complainant's email dated August 13, 2012. This email refers to the demolition of the subject building, and alleges that the property was rezoned unilaterally by the City of Edmonton. It also indicates the demolition led to a significant increase in property tax.

[48] Although this email might be considered to amount to *reasons* for an appeal, without evidence to support these allegations the Board cannot place any weight on this document.

[49] The Board accepts the Respondent's evidence outlining the history and circumstances of the zoning of the subject property (R-1, p. 4-6), and finds that there was no unilateral rezoning as alleged by the Complainant. Rather, the demolition resulted in a reversion from legal, non-conforming status, such that the subject could no longer benefit from the exception in s. 11 of *MRAT*. Once the exception in s. 11 ceased to have effect (i.e. once the structure was demolished), the Respondent had no choice but to assess the property as a commercially zoned lot.

[50] The onus is on the Complainant to provide the Board with sufficient and compelling evidence to support the revision of the 2012 assessment. The Complainant has failed to do so.

[51] The Board is also satisfied that the Respondent's equity comparables and vacant land sales support the 2012 assessment of the subject property.

[52] For these reasons, the Board concludes that the current assessment is fair and correct and should not be disturbed.

Dissenting Opinion

[53] There was no dissenting opinion.

Heard commencing December 3, 2012.

Dated this 18th day of December, 2012, at the City of Edmonton, Alberta.

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Dean Sanduga, Presiding Officer

Appearances:

Murray Olsen
for the Complainant

Keivan Navidikasmaei

Tanya Smith
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.

Appendix "A"

Legislation

[1] 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 299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

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.

s 643(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

[2] The Matters Relating to Assessment Complaints Regulation reads:

***Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009**

s 8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

s 9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

s 9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

s 10(3) A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.

s 15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

[3] The Matters Relating to Assessment and Taxation Regulation reads:

***Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004**

s 11 When a property is used for farming operations or residential purposes and an action is taken under Part 17 of the Act that has the effect of permitting or prescribing for that property some other use, the assessor must determine its value

(a) in accordance with its residential use, for that part of the property that is occupied by the owner or the purchaser, or the spouse or adult interdependent partner or dependant of the owner or purchaser, and is used exclusively for residential purposes.