Edmonton Composite Assessment Review Board

Citation: 480955 Alberta Ltd. v The City of Edmonton, 2013 ECARB 00989

Assessment Roll Number: 9556713
Municipal Address: 8170 50 STREET NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

480955 Alberta Ltd.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
James Fleming, Presiding Officer
Martha Miller, Board Member
Mary Sheldon, Board Member

Procedural Matters

[1] The Complainant did not attend the hearing. The Board Officer confirmed that proper notice of the hearing had been sent to the Complainant and that no postponement had been requested or granted. In compliance with section 463 of the *Municipal Government Act* (MGA), the Board proceeded to deal with the complaint.

[2] The Respondent did not indicate any objection to the composition of the Board. One member of the Board advised that his signature on behalf of the University of Alberta was on a lease amending agreement contained in the Complainant's disclosure. That member stated that this had arisen during the course of his duties with the University of Alberta approximately twenty years previously. The member advised that this would not impede his ability to give a fair and impartial hearing and the Respondent had no objection to the member continuing on the Board. The other members of the Board stated that they had no bias with respect to this matter.

Preliminary Matters

[3] At the outset of the hearing, the Respondent noted the absence of the Complainant and objected to the Board accepting the Complainant's disclosure as evidence. The Respondent submitted that, although the Complainant's disclosure was filed and served in accordance with section 8(2) of the *Matters Relating to Assessment Complaints Regulation* (MRAC), the Complainant had not complied with the requirements of section 16 of MRAC. Section 16 says that a party to a hearing may attend a hearing in person or instead, may file a written presentation

and serve that document on the other parties. The Respondent argued that, since the Complainant was not attending the merit hearing in person, he ought to have filed and served a written presentation as set out in that section of the legislation. The Respondent argued further that, in his opinion, the written presentation contemplated by section 16 and the disclosure contemplated by section 8 are completely different and separate. In support of this argument, the Respondent pointed out the differing time lines prescribed by each section. The Respondent submitted that the Complainant had not stated an intention to rely on the disclosure filed if he was unable to attend the hearing. The Respondent also submitted that without the further clarification provided by a written presentation he was unable to adequately reply to the information in the Complainant's disclosure. In conclusion, the Respondent requested that the Board refuse to admit the Complainant's disclosure as evidence in this hearing.

[4] The Board considered the objection raised by the Respondent and decided that the Complainant's disclosure be admitted as evidence (Exhibit C-1). The Board noted that the Complainant had properly filed and served his disclosure and fulfilled all the requirements of section 8 of MRAC. According to section 9(2) of MRAC, a composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8 of MRAC. In the opinion of the Board, if disclosure has been made in accordance with section 8, the absence of the Complainant or a written presentation from the Complainant is not a bar to a composite assessment review board hearing that disclosure as evidence. There is no requirement in either section 8 or section 9 that a Complainant must also provide a written presentation as contemplated by section 16 if a Complainant chooses not to attend the hearing.

[5] In the alternative, although the Board agrees that the time lines in section 8 and section 16 suggest different procedures, the Board does not see any impediment to one document satisfying the requirements of both sections. If that is the case and the properly filed and served disclosure serves as well as the written presentation under section16, then the requirement under section 16(2) that the party **must** provide a copy of the written presentation to the other party has also been satisfied.

[6] In the further alternative, the Board notes that the language of section 16 is permissive – a person **may**, instead of attending a hearing in person, file a written presentation with the clerk of the assessment review board. There is no absolute requirement in section 16 that a separate - or any - written presentation be filed in lieu of personal attendance at a hearing.

[7] The Respondent stated that for the purposes of this hearing, he would accept the Board's decision to allow the Complainant's disclosure to be entered as evidence. However, the Respondent stated that, in his opinion, the Board's decision did not recognize the distinction between disclosure and the presentation of evidence, and effectively deprived section 16 of MRAC of any meaning.

Background

[8] The subject is a cluster of five buildings located in an industrial area of Edmonton at 8170 50th Street. The buildings back onto the CPR railway track. The property is assessed on the Income Approach to Value (IAV) with the exception of one building, which is assessed on the cost approach. The current assessment of the subject is $19,575,000.

Issue

[9] Does the current assessment adequately reflect factors affecting the subject which would have an impact on its market value?

Legislation

[10] The *Municipal Government Act*, RSA 2000, c M-26, reads:

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.463 If any person who is given notice of the hearing does not attend, the assessment review board must proceed to deal with the complaint if

(a) all persons required to be notified were given notice of the hearing, and

(b) no request for a postponement or an adjournment was received by the board or, if a request was received, no postponement or adjournment was granted by the board.

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.

[11] *Matters Relating to Assessment Complaints Regulation* AR 310/2009 reads:

s 8(2) If a complainant 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 any signed witness report for each witness, and any written argument that the complainant intends to present at the hearing n sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

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

s 16(1) Parties to a hearing before an assessment review board may attend the hearing in person or may, instead of attending in person, file a written presentation with the clerk of the assessment review board.

s 16(2) A party who files a written presentation under subsection (1) must provide a copy of it to the other parties,

(a) in the case of a hearing before a local assessment review board, at least 3 days before the hearing;

(b) in the case of a hearing before a composite assessment review board, at least 7 days before the hearing.

Position of the Complainant

[12] The Complainant argued that the subject has characteristics which negatively affect its value. The Complainant submitted that the CPR railway track is close to the subject property and the noise and vibration from passing trains cause disturbance inside the subject property.

[13] The Complainant argued that the subject property is unsuitable for a warehouse operation because of the low ceilings and is unsuitable for commercial operation because of a lack of surrounding residential neighborhoods.

[14] The Complainant also submitted that the subject has only one access point and the second floor office has no elevator access. As well, the Complainant stated that the subject is over 45 years old and there should be a structural repair consideration of 5%. One building has more than 50% vacancy and, in the opinion of the Complainant, is obsolete. With respect to the University of Alberta lease for Building 1 and 2, the Complainant stated that the maximum allowed increase in rent would reduce the potential income.

[15] The Complainant also provided the *pro forma* produced by the City of Edmonton for the subject and amended the potential gross income and structural allowance to demonstrate that a current value for the subject should be between $16,754,000 and $17,000,000.

[16] The Complainant included a copy of the lease amending agreement with the University of Alberta as well as area calculations from M.B. Wolski, Interior Design Ltd and documentation entitled "new building cost".

[17] The Complainant requested that the Board reduce the current assessment of the subject to between $16,754,000 and $17,000,000.

Position of the Respondent

[18] The Respondent stated that, had the Complainant been present, there would have been many questions concerning the Complainant's evidence. The Respondent pointed out that the Complainant had provided no proof or evidence to support the contention that the subject would not be suitable for industrial or commercial use nor was there proof that access and lack of elevator were negative factors. The Respondent also questioned where the Complainant derived his calculations noted on the *pro forma* and also noted that the lease amending agreement provided by the Complainant was not in force on the valuation date of July 1, 2012.

[19] The Respondent provided Exhibit R-1 to support the position that the current assessment of the subject is correct, fair and equitable. The Respondent advised the Board that pages of Exhibit R-1 which dealt with exemptions were irrelevant to this hearing and would not be considered.

[20] The Respondent submitted that the subject was assessed as a "C" class building to reflect its poor location next to railway tracks even though an earlier inspection classified the subject as a "B" class building.

[21] The Respondent noted that the vacancy rate allowed in its *pro forma* for three buildings was 15% and 11% for one building. The Respondent also noted a negative adjustment for shell space in one building. The Respondent noted as well that, with respect to the age of the subject, all buildings of that age in the inventory received a 2% structural adjustment.

[22] The Respondent provided a chart of suburban rental rates for EGA "C" buildings which showed that the time adjusted median net rent per square foot for these buildings was $12.61. The Respondent noted that a rental rate of $9.00 had been applied to all the subject buildings because of hierarchy.

[23] The Respondent also provided a chart of the assessments of suburban EGA "C" Class Office Buildings. The Respondent argued that this demonstrated that the assessments per square foot of office space of the buildings in the comparable complex supported the assessment of the subject.

[24] The Respondent requested that the Board confirm the current assessment of the subject at $19,575,000.

Decision

[25] The complaint is denied and the assessment is confirmed at **$19,575,000**.

Reasons for the Decision

[26] The Board notes that it is the responsibility of the Complainant to produce sufficient evidence to allow the Board to conclude that, on a balance of probabilities, there is an error in the assessment.

[27] In this case, it is the Board's opinion that the Complainant did not discharge this responsibility. The Complainant stated in his evidence factors such as poor location, age, lack of elevator, poor access which he indicated had a negative impact on the value of the subject. However, the Board was not provided with any evidence to support the negative impact of some of the factors on property value. With respect to other factors, such as poor location, the Board notes that adjustments have already been made by the municipality in calculating the assessment.

[28] With respect to the calculations and amendments made by the Complainant on the Respondent's *pro forma*, in particular, the Complainant's request for a 5% structural allowance, the Board notes that a 2% structural allowance is applied regardless of age or structural repair.

As well, the Board heard evidence that the long term lease with the University of Alberta, which the Complainant indicated would affect the potential gross income, had expired before the valuation date of July 1, 2012.

[29] In the opinion of the Board, the equity comparables presented by the Respondent demonstrate that the assessment of the subject is within an acceptable range.

[30] The Board concludes that the current assessment of the subject is correct, fair and equitable.

Dissenting Opinion

[31] There was no dissenting opinion.

Heard on July 11, 2013.
Dated this 23rd day of July, 2013, at the City of Edmonton, Alberta.

James Fleming

James Fleming, Presiding Officer

Appearances:

Cameron Ashmore, City of Edmonton Law Branch
Darren Davies, City of Edmonton 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.