Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2013 ECARB 01388

Assessment Roll Number: 1037910
Municipal Address: 9651 25 Avenue NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Patricia Mowbrey, Presiding Officer
Jasbeer Singh, Board Member
Taras Luciw, Board Member

Procedural Matters

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

[2] All witnesses were sworn in at the request of the Respondent's legal representative.

Preliminary Matters

[3] There were no preliminary issues before the Board.

Background

[4] The subject property is a single tenant, medium warehouse with a total area of 18,874 sq ft with 10,047 sq ft of finished office space on the main floor. There is no finished space on the upper mezzanine level. The subject property located at 9651 – 25 Avenue NW in the Parsons Industrial neighbourhood. It was built in 1998 and is comprised of one building, in average condition.

Issue

[5] Is the 2013 assessment of $3,626,000 for the subject property in excess of market value?

Legislation

[6] **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 285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

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's position was that the assessment of $3,626,000 was in excess of market value. In support of this position, the Complainant presented a 22 page assessment brief (Exhibit C-1), testimonial evidence and argument.

[8] The Complainant provided a chart of eight sale comparables that were built between 1971 and 1992, and ranged in site coverage from 24% to 55%. Building size ranged from 10,000 sq ft to 28,686 sq ft and the time adjusted sale prices ranged from $100.61 and $142.14 per sq ft (C-1, page 1). The subject property is shown below the table of the Complainant's eight sale comparables.

	Address	Year Built	Site Cover %	Total Area	Sale Date	TASP/sft
1	5725 - 92 Street	1971	37	15,002	May-09	121.76
2	7216 - 76 Ave	1976	55	15,000	May-09	100.61
3	7703/15 – 69 Str	1975	36	15,800	Jul-09	118.48
4	9719 - 63 Ave	1988	44	17,149	Jul-10	119.23
5	5820 - 96 Street	1979	45	10,000	Aug-10	112.70
6	8803 - 58 Ave	1980	24	24,602	Sep-10	136.33
7	4611– Morris Rd	1991	28	11,987	Apr-10	142.14
8	9111 – 41 Ave	1992	26	28,688	Mar-10	139.73
	9651 - 25 Ave	**1998**	**21**	**18,875**	**Assmt**	**192.00**

[9] The Complainant requested that the Board place more weight on sales comparables #4 to #8, as the first three sales were much older and the sales were dated (C-1, page 2).

[10] The Complainant informed the Board that sales #4 and #7 shared the major traffic artery exposure attribute with the subject.

[11] The Complainant emphasized that a CARB had reduced the 2012 assessment value to $148.50/ sq ft and requested the Board to reduce the 2013 assessment to $135.00/sq ft, for an assessment of $2,550,000 (C-1, page 2).

[12] The Complainant stated that the Respondent's sales comparables were superior properties and ought to be treated as outliers by the Board. The Complainant requested that the Board place more weight on comparable #8 (9111 – 41 Avenue NW) and further argued that exposure to the busy 23rd Avenue had no utility or value to the owner of the subject property.

[13] The Complainant requested that the Board to reduce the subject's 2013 assessment to $135/ sq ft, to be in line with the CARB decision for the 2012 assessment.

Position of the Respondent

[14] The Respondent presented a 66 page document (Exhibit R-1) that included an assessment brief and a Law & Legislation brief.

[15] The Respondent's assessment brief included a chart of five sale comparables and comments on the Complainant's eight comparables (R-1, page 22). The Respondent highlighted the significant valuation factors that required an adjustment, upward or downward, to provide a true comparison.

[16] The Respondent stated that all of the Complainant's sale comparables needed an upward adjustment in multiple dimensions.

[17] While at least two of the Respondent's comparables (#3 and #4) provide true comparison, one of these (#3) was also located in location Group 12, the same as the subject (R-1, page 22). The Respondent further argued that:

a. All eight of the Complainant's comparables were older than the subject property, which was built in 1998 (C-1, page 1 and R-1, page 22).

b. All eight of the comparables had much higher site coverage compared with the subject property's 21% site coverage (C-1, page 1 and R-1, page 22). The Respondent emphasized that the site-coverage was the second most significant factor in assessment valuation (R-1, page 8).

c. Unlike most of the Complainant's comparables, the subject property enjoyed excellent exposure to very heavy traffic on 23rd Avenue.

d. Finished office space on the main floor was deemed a positive attribute and added value to the property. None of the Complainant's eight sale comparables had as much finished main floor office space as the subject (more than 53%).

e. There was only one sale (#5) out of eight of the Complainant's sales comparables that was located on a truck route, which was situated a block away from the traffic artery.

f. Two of the Complainant's comparables (sale #1 and sale #2) had below market leases at the time of the sale and hence, the sale prices could not be relied upon (C-1, pages 3 and 4).

g. Comparable #3 had been purchased by the lead tenant of the property and the leases in place were stated to be short-term and below market. The Respondent argued that in such circumstances, the Network reported sale price could not be relied upon (C-1, page 5).

h. Two other sale comparables (sale #4 and sale #5) presented by the Complainant were 'vacant' at the time of the sale and therefore the stated sale price could not be accepted as reflective of the market valuations for similar properties. In addition, the Complainant's comparable #4 was in 'Fair' condition and hence, not comparable with the subject property which was in average condition (C-1, pages 6 and 7).

i. Two sales (#5 and #6) from the Complainant's list of eight sales comparables were non-arm's length sales. The buyer in respect of the sales comparable #5 was a 25% share holder of the vendor, and the purchaser of sale (#6) was an employee of the vendor. It was not clear what the influence was on the sale but the stated sale prices could not be relied upon for establishing the market value of the subject property.

j. The subject is located in 'Industrial Group 12 – Major Roadways South'. This is considered to be one of the most desirable industrial locations in the city. Seven of the Complainant's sale comparables were located outside of this group but were located in 'Industrial Group 18 – Core South', which is less desirable than the subject's location (R-1, page 10). The one comparable from the Complainant's list of eight located within Group 12 is #4, which was only in 'Fair' condition at the time of sale and thus not comparable.

[18] The Respondent explained the methodology of classifying the industrial properties in different groups and how the two adjacent properties could be placed in different groups (R-1, pages 12 and 13). The Respondent stated that the industrial properties in Group 12 could receive a valuation premium of 10% - 15% over similar properties in Group 18.

[19] The Respondent stated that because the subject property did not have direct access from the busy 23rd Avenue, a negative adjustment of 10% had been applied to its 2013 assessment (R-1, page 19).

[20] In summation, the Respondent cited the Court of Queen's Bench decision *Globexx Properties Inc. v. Edmonton (City),* 2012 ABQB 651 (*Globexx*) in which, "the Court confirmed that neither a prior year's Board decision or a prior year's assessment is a 'starting point' or 'base for the following year's assessment" (R-1, page 55).

[21] The Respondent requested that the Board confirm the 2013 assessment of $3,626,000.

Decision

[22] The Board confirms the 2013 assessment of $3,626,000.

Reasons for the Decision

[23] The Board referred to the MGA, s. 285, which states: Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

[24] The Complainant indicated that according to the Respondent's time-adjustment chart (C-1, page 11), sale prices increased by 4% over the past year. Therefore, the 2013 requested assessment was based on an increase of 4% of the 2012 reduced assessment.

[25] The Board also referred to *Globexx* as discussed in R-1, page 55 (see para 20).

[26] The Board took note of the Factors Affecting Value in the warehouse inventory for assessment purposes (R-1, page 8), which are: total main floor area, site coverage, effective age, condition, location of the property, main floor finished area, and upper finished area.

[27] The Board noted that main floor area is based on the exterior measurements of the building, and also noted that economies of scale dictate that larger buildings trade for a lower unit of comparison than smaller buildings.

[28] The Board also noted that location, for mass appraisal purposes, placed industrial properties in groupings for comparability based on neighbourhood boundaries, major roadways or level of servicing. The two groupings included in the parties' comparables are Industrial Group 12, the second highest in desirability, and Industrial Group 18, the fourth highest in desirability. The subject is in Industrial Group 12.

[29] The Board reviewed the comparable sales presented by the Complainant (C-1, page 1) and noted that the Complainant had requested the Board to place more weight on the sales with the most similar physical condition, sales #4 through #8.

[30] The Board considered sales #4 to #8 and noted the following:

a. Sale #4. Similar location and size, older by 10 years, site coverage more than double the subject's, finished main floor office space almost half, and was vacant at the time of sale. The most significant difference was its 'fair' condition, as the subject was in average condition.

b. Sale #5. Less desirable location, smaller building size, similar in condition but 19 years older than the subject, more than double the site coverage of the subject and less than a quarter of the finished office space of the subject, vacant at the time of sale and reported by the Respondent to be a non-arm's length sale.

c. Sale #6. Less desirable location, about 10% larger and similar to the subject in site coverage and condition, 18 years older, 40% main floor finished office space as the subject, but substantial upper finished area (8,249 sq ft) on the mezzanine level and was flagged by the Respondent as a non-arm's length sale.

d. Sale #7. Less desirable location, similar age and condition, higher site coverage by 30%, smaller in size by 39%, small main and upper finished office space, small area of excess land value included.

e. Sale #8. Less desirable location, age and site coverage similar, size larger by 30%, finished main floor office space smaller by 50%, upper finished office space same area as main floor.

[31] The Board reviewed the comparables presented by the Respondent (R-1, page 22):

a. Sale #1. Similar location and condition, older by 17 years, site coverage 25% less, building size 41% of the subject, with 29% finished office space and an equal sized finished upper office.

b. Sale #2. Less desirable location, similar age and condition, site coverage 20% lower than the subject, building size 40% smaller, finished main floor office space 10% of the total main floor as compared with the subject's 53%.

c. Sale #3. Similar location, similar effective age, site coverage and condition, building size is 60% of the subject and the finished main floor office space is 22% as compared with the subject's 53% of the main floor space, upper finished office space is 20% of the total main floor area.

d. Sale #4. Less desirable location, similar age and condition, Site coverage greater by 33%, building size smaller by 47%, finished main floor office space 24% of the total main floor space.

e. Sale #5. Less desirable location, similar age and condition, site coverage greater by 38%, building size smaller by 20%, finished main floor office space only 22% of the total main floor space.

[32] The Board finds that most of the comparables presented by both parties differ significantly from the subject property, in terms of location, age, extent of finished office space and the site coverage, to provide meaningful correlation or guidance to the Board.

[33] However, the Board finds that the Respondent's sale comparable #3 is quite persuasive, in that it has strong comparability with the subject in terms of location, age, site coverage, and condition. The difference lies in the building size and of the finished main floor office space. While the subject size was 18,874 sq ft, sale #3 was 11,494 sq ft or 60% of the size. The subject has 10,047 sq ft of main floor finished office space, whereas, comparable #3 has 3,088 sq ft, or 29% of the total main floor finished space, and has upper office space of 2,250 sq ft, which is valued at a considerably lower rate than main floor office space. Even without the additional value of the larger finished office space included in the sale price, comparable #3, with a time-adjusted sale price of $197/ sq ft, provides strong support for the subject property's 2013 assessment at $192/ sq ft.

[34] The Board finds that the Complainant's evidence, testimony and argument did not provide sufficient and compelling reasons for the Board to reduce the assessment. Jurisprudence has established that the burden of proof for demonstrating that an assessment is incorrect, rests with the Complainant.

[35] The Board finds the 2013 assessment of $3,626,000 is correct, fair and equitable.

Dissenting Opinion

[36] There was no dissenting opinion.

Heard September 16, 2013.

Dated this 16th day of October, 2013, at the City of Edmonton, Alberta.

Patricia Mowbrey, Presiding Officer

Appearances:

Peter Smith
for the Complainant

Cam Ashmore
Suzanne Magdiak
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.