Edmonton Composite Assessment Review Board

Citation: John C. Manning v The City of Edmonton, 2013 ECARB 01394

Assessment Roll Number: 8635948
Municipal Address: 5210 99 Street NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

John C. Manning

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 is a 3-building property located at 5210- 99 Street NW along a major roadway (99 Street) in Coronet Industrial neighbourhood in southeast Edmonton. It has a site-coverage of 31%. Building #1 in average condition, has an effective year built of 1975, and a total main floor area of 13,985 sq ft including 6,216 sq ft of finished office space. Building #2 is in fair condition with an effective year built of 1975. It has a total main floor area of7,000 sq ft including 1,666 sq ft of finished office space. An additional 'shed' of 1969 vintage and measuring 960 sq ft, carries a nominal assessment value.

[5] Is the subject property assessed in excess of market value?

Legislation

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

> s l(l)(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>

[7] The position ofthe Complainant was that the assessment of$3,155,000 was in excess of the market value. In support ofthis position, the Complainant presented a 20 page assessment brief (Exhibit C-1), testimonial evidence and argument.

[8] The Complainant provided a chart of six sales comparables that were built between 1971 and 1988 and ranged in site coverage from 24% to 55%. The buildings varied in size from 10,000 sq ft to 24,602 sq ft, with time-adjusted sale prices ranging from $100.61 to $136.33/ sq ft (C-1, page 1). The subject property is shown below the table of the Complainant's six sales comparables.

	Address	Built	Cover %	Area	Sale Date	TASP/sft
1	5725-92 St.	1971	37	15,002	May-09	121.76
2	7216-76 Ave.	1976	55	15,000	May-09	100.61
3	7703/15 - 69 St.	1975	36	15,800	Jul-09	118.48
4	9719 - 63 Ave.	1988	44	17,149	Jul-10	119.23
5	5820- 96 St.	1979	45	10,000	Aug-10	112.70
6	8803- 58 Ave.	1980	24	24,602	Sep-10	136.33
Sub	5210-99 St.	1975	32	13,986		150.00
	Building #2			7,000		150.00

[9] The Complainant requested the Board to place more weight on sales comparables #1, #3 and #6 as these had the most characteristic similarities with the subject, (C-1, page 2).

[10] The Complainant questioned the City's assessment practice ofvaluing each ofthe two buildings separately and adding the individual valuations for the total2013 assessment, ignoring the differences.

[11] The Complainant argued that any buyer of such property would take into account the total building area and not treat each building as a separate entity. As such, the City's assessment practice does not account for market realities.

[12] The Complainant stressed that building #2 could only be accessed from within the property and that reduced the development potential and utility of the land, putting into question the validity of the site coverage shown at 32%.

[13] The Complainant's brief included a CARB decision indicating that pursuant to an appeal, the subject property's 2012 assessment value had been reduced to $2,536,000 or $125.00 per sq ft (C-1, page 13).

[14] The Complainant stated that one of the Respondent's sales comparables was dissimilar because of condition and the rest were superior properties that deserved to be treated as outliers. The Complainant requested the Board to be cognizant of the fact that one of the buildings had restricted access and because the entire property would sell as one, it should not be assessed as two separate buildings. The Complainant requested a reduction of the subject's 2013 assessment to $120/ sq ft or a total of $2,520,000.

Position of the Respondent

[15] Defending the 2013 assessment, the Respondent presented a 49 page document (Exhibit R-1) that included an assessment brief and a Law & Legislation brief.

[16] The Respondent's assessment brief included a chart offive sales comparables and relevant comments on four of the Complainant's six comparables. The Respondent highlighted the significant valuation factors that needed adjustments, upward or downward, to provide a truly comparative picture (R-1, page 20). The Respondent's five sales comparables and the subject property with 2013 assessment of $150/ sq ft, are as follows.

	Address	Grp.	Built	Cover %	Main Fir	Main *Office*	Upper Finish	Total Area	Cond.	Sale Date	TASP/sft
1	6140- 99 St.	12	1979	34	8,514	2,104	0	8,514	Avg	Mar-09	185
2	6025- 99 St.	12	1971	41	12,009	302	0	12,009	Avg	Aug-08	185
3	9333-37 Ave	18	1977	30	16,598	4,844	3,305	19,903	Avg	Aug-08	153
4	3120- 93 St.	18	1986	36	17,802	6.428	0	17,802	Avg	Jun-10	146
5	8011 Davies Rd	18	1981	31	18.412	2,784	0	18.412	Av9	Dec-11	141
Sub	**5210-99 St.**	**12**	**1975**	**31**	**13,985**	**6,216**	**0**	**13,985**	**Avg**		**150**
		Building #2			**6,999**	**1,666**	**0**	**6,999**	**Fair**		**150**

[17] The Respondent stated that for multiple building properties like the subject, each building was analyzed for its contributory value to the property and a single assessment was produced that represented the aggregate market value of each building ofthe property. The reasons for doing so were founded in both appraisal theory and market analysis. The Respondent drew the Board's

attention to the relevant parts of the City's assessment policy included in the assessment brief, (R-1, page 8).

[18] The Respondent stated that the Complainant's sales #5 and #6 were non-arm's length sales and should receive no weight, (R-1, page 34). The remaining four of the Complainant's sales comparables needed upward adjustment in multiple dimensions (R-1, page 20). The Respondent further argued that:

a. All four of the valid sales comparables had much higher site coverage compared with the subject property's 32% (C-1, page 1 and R-1, page 20). The Respondent emphasized that the site-coverage was the second most significant factor in assessment valuation (R-1, page 9).

b. Three of the four valid sales comparables provided by the Complainant were less desirable in location, being located in group 18 compared with the subject's location group 12.

c. Unlike every one of the Complainant's comparables, the subject property enjoyed excellent exposure to major arterial traffic on 99th Street.

d. Finished office space on the main floor was deemed a positive attribute and added value to the property. None of the Complainant's four valid sales comparables had as much finished main floor office space as the subject's total of more than 37%.

e. 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).

f. Sales 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).

g. Two other sales comparables (sale #4 and sale #5) presented by the Complainant were 'vacant' at the time of the sale. Therefore, the Network reported sale prices 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 not comparable with the subject property (C-1, pages 6 and 7).

h. Two sales (#5 and #6) from the Complainant's list of six 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 the property (#6) was an employee of the vendor. It was not clear as to what influence this had on the sales but the stated sale prices could not be relied upon for establishing the market value.

1. The subject is located in 'Industrial Group 12-Major Roadways South'. This is considered to be the second most desirable industrial location in the city. Five out of six of the Complainant's sales comparables were located outside of this area (in 'Industrial Group 18-Core South'), and were less desirable than the subject location (R-1, page 10). The only comparable from the Complainant's list of six,

located within Group 12, is #4, and that property was in 'Fair' condition at the time of its sale and not comparable.

[19] 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.

[20] The Respondent stated that the subject property was located on a major traffic artery, and had been assessed with 'major' traffic influence. Additionally, because building #2 property did not have direct exposure to the busy 99th St., a negative adjustment of 10% had been applied to its 2013 assessment (R-1, page 18).

[21] 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 38).

[22] The Respondent requested that the Board confirm the 2013 assessment of $3,155,000.

Decision

[23] The Board confirms the 2013 assessment at $3,155,000.

<u>Reasons for the Decision</u>

[24] 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.

[25] The Board also referred to *Globexx*, as discussed at R-1, Law and Legislation, page 38.

[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 was persuaded by the Respondent's reasoning and the methodology for multiple building assessments.

[28] 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.

[29] 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.

[30] 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 characteristics, i.e. sales #1, #3, and #6.

[31] The Board considered the Complainant's sale comparables and noted the following:

a. Sale # 1. Less desirable location, comparable in size but 4 years older with a 20% higher site coverage and less than half the finished main floor office space as the subject.

b. Sale #2. Less desirable location, similar building size, similar in condition and age with 74% higher site coverage and less than half the finished office space as the subject.

c. Sale #3. Less desirable location but comparable building size, site coverage, age and condition. This had 60% of the main floor finished office space as the subject and the property had been purchased by the lead tenant.

d. Sale #4. Similar location but 22% larger in size, 13 years newer with 42% higher site coverage and comparable finished main floor office space. The property was vacant at the time of sale but the most significant difference was its condition -listed as 'fair' with the subject being in average condition.

e. Sale #5. Less desirable location, similar age and condition but 28% smaller building size with 45% higher site coverage. Finished main floor office space was 40% of the subject. The property was vacant at the time of sale and the sale had been flagged as a non-arm's length transaction.

f. Sale #6. Less desirable location, five years newer than the subject but in similar condition with 50% larger building size and 22% lower site coverage. Finished main floor office space was nearly 60% of the subject with a substantial amount (8,249 sq ft) of office space on the upper mezzanine level. However, the sale had been flagged as a non-arm's length transaction.

[32] The Board reviewed the sales comparables presented by the Respondent (R-1, page 20):

a. Sale # 1. Similar location, condition and age, site coverage 10% higher. Compared with building #1 of the subject, the building size is only 61% ofthe subject and only 25% of this is finished office space, compared with nearly 45% finished main floor office space in the subject property. Compared with the smaller building of the subject (building #2), this is only 22% larger in size and has 26% more finished office space on the main floor than the subject.

b. Sale #2. Similar location, age, size and condition, site coverage is 30% higher but the finished main floor office space is 5% of the subject.

c. Sale #3. Less desirable location, comparable age, site coverage and condition, building size is 20% larger than the subject and the finished main floor office space is 22% of the main floor space as compared with the subject's 53%. Upper finished office space is 20% of the total main floor area.

d. Sale #4. Less desirable location, 11 years newer but in similar condition and main floor finished office space, building is 27% larger with slightly higher site coverage.

e. Sale #5. Less desirable location, six years newer but in similar condition with less than 50% of main floor finished office space. The building is 31% larger with identical site coverage.

[33] 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.

[34] However, the Board finds the Respondent's sale comparable #2 quite persuasive, in that, it has strong comparability with the subject in terms oflocation, age, site coverage, building size and condition. The most significant difference lies in the size of the finished main floor office space. While the subject has 6,216 sq ft or 44% of the total main floor finished as office space, comparable #2 has only 302 sq ft or less than 3% of the total main floor finished as office space. Even without the additional value of the finished office space included in the sale price, comparable #2, with a time-adjusted sale price of $185/ sq ft, provides strong support for the subject property's 2013 assessment at $150/ sq ft.

[35] 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 of demonstrating an assessment is incorrect rests with the Complainant.

[36] The Board finds the 2013 assessment of$3,155,000, is correct, fair and equitable.

<u>Dissenting Opinion</u>

[37] 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.