

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 01544

Assessment Roll Number: 8951386

Municipal Address: 3304 Parsons Road NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Robert Mowbrey, Presiding Officer

Howard Worrell, Board Member

Judy Shewchuk, 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 no bias on this file.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is a 38,867 square foot average quality medium warehouse located at 3304 Parsons Road NW. The subject property was built in 1979 and has site coverage of 39%. The 2013 assessment is \$3,995,500.

Issue

[4] What is the market value of the subject property?

Legislation

[5] **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 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

[6] The Complainant filed this complaint on the basis that the subject property's assessment of \$3,995,500 exceeds the best estimate of market value. In support of this position, the Complainant presented the Board with a 34 page evidence package marked as Exhibit C-1. In addition, the Complainant presented the Board with an 18 page rebuttal package marked as Exhibit C-2.

[7] The Complainant advised the Board that the single issue was the sale of the subject property itself. The Network documents determined the sale of the subject property occurred in June 2010 [Exhibit C-1 page 7].

[8] The Complainant advised the Board that there were three Edmonton CARB decisions which support the request to reduce the 2013 assessment [Exhibit C-1 pages 13-16, 19-23, and 25-28]. The Complainant cited *Colliers International Realty Advisors Inc v. The City of Edmonton*, 2012 ECARB 2223: "The Board is persuaded by the sale of the subject property. The Board believes the best indicator of market value is the sale of the subject property itself" [Exhibit C-1 page 23, paragraph 28].

[9] The Complainant also referred to CARB decision 0302-10/2011, which states: "The Board is of the opinion that the arms length sale of the subject property is the best indicator of value." The Board in that case also stated that it:

"...looked to past decisions in regard to the sale of a subject property in determining assessed value, as well as Alberta Court of Queen's Bench, 697604 Alberta Ltd. vs. Calgary "24". In my view, the Municipal Government Board [MGB] failure to rely on the evidence of value provided by the recent sale of the property fails to meet the test of reasonableness. Board Orders 068104, 04106, and 025105 all indicate a valuable sale of the subject near or at the assessment date is the best indicator of value" [Exhibit C-1 page 8].

[10] The Complainant requested that the Board reduce the 2013 assessment to \$3,277,500, based on the June 2010 sale price of \$2,900,000 and utilizing the City of Edmonton's time-adjustment factor of 1.1303 for June 2010 [Exhibit C-1 pages 6 and 24].

[11] The Complainant also presented the Board with rebuttal evidence that showed the subject's assessment to sale ratio (ASR) was 1.22% compared to the average of the three comparables of the Complainant [Exhibit C-2 page 3].

[12] During argument and summation, the Complainant stated the Respondent was exercising an abuse of process. The Complainant stated the Respondent tends to ignore the facts and that both the CARB and MGB have accepted the sale price of the subject property as the best evidence of establishing market value.

[13] The Complainant stated that fairness and equity showed that the ASR should be approximately 0.89% and not the 1.22% of the subject property [C-2, page 3].

[14] The Complainant requested that the Board reduce the 2013 assessment of \$3,995,500 to \$3,277,500.

Position of the Respondent

[15] The Respondent defended the 2013 assessment by providing the Board with a 55 page disclosure package marked as Exhibit R-1.

[16] The Respondent explained to the Board that the assessment and similar assessments were prepared using the direct sales comparison methodology. The Respondent advised the Board that “there is ample data from which to derive reliable estimates and only a portion of the inventory is traded based on its ability to generate income. A large percentage of industrial property in Edmonton is owner-occupied, and as such has no income attributable to it” [Exhibit R-1 page 6].

[17] The Respondent advised the Board that sales occurring from January 2008 through June 2012 were used in the model development and testing. Factors found to affect value in the warehouse inventory are as follows: total main floor area (per building), site coverage, effective age (per building), condition (per building), location of the property, main floor finished area, as well as finished area (per building). The most common unit of comparison for industrial properties is value per square foot of building area.[Exhibit R-1 pages 7,8 and 11].

[18] The Respondent provided the Board with maps, photographs and assessment details of the subject property [Exhibit R-1 pages 12-17].

[19] In support of the City of Edmonton’s assessment, the Respondent presented 5 sale comparables to the Board. The sales ranged in year built from 1974 to 1979 and ranged in site coverage from 23 to 45%. Total building area ranged from 26,499 square feet to 38,868 square feet, and the time-adjusted sale price ranged from \$84 to \$160 per square foot [Exhibit R-1 page 30].

[20] The Respondent advised the Board regarding law and legislation issues as follows:

- a. Market value within a range. “The MGB has ruled on a number of occasions that market value encompasses a range of values and the issue is whether the assessment falls within that range of values” [Exhibit R-1 page 37].
- b. The 5% Range. “Both the ARB and MGB have ruled on numerous occasions that it would not alter an assessment, if the requested change to the assessment or if the evidence indicates a change to the assessment within 5%” [Exhibit R-1 page 38].
- c. Burden of Proof or Onus of the Parties. “The onus rests with the Complainant to provide sufficiently convincing evidence on which a change to the assessment can

be based. The Complainant's evidence needs to be sufficiently compelling to allow the Board to alter the assessment" [Exhibit R-1 page40].

[21] During argument and summation, the Respondent advised the Board that each year's assessment was independent of previous assessments, and that the Complainant had only provided previous board decisions and no sales comparables.

[22] The Respondent stated that the sale of the subject property was at the low end of the market and some sales sell under the market and some sales sell over the market.

[23] The Respondent requested that the Board confirm the 2013 assessment of \$3,995,500.

Decision

[24] The Board reduces the 2013 assessment of \$3,995,500 to \$3,277,500.

Reasons for the Decision

[25] The Board does not agree with the Complainant that the Respondent exercised an abuse of process. Each property in a municipality is legislated to be assessed on an annual basis.

[26] The Board believes the sale of the subject property is a valid sale and meets the definition of "market."

[27] The Board is therefore persuaded by the sale of the subject property. The Board believes the best indicator of market value is the sale of the subject property itself. Furthermore, the Complainant utilized the time-adjustment factors to calculate the value of the subject property from the date of sale to the valuation date.

[28] The Board finds that the principles respecting the recent sale of the subject property outlined in *697604 Alberta Ltd. v Calgary City*, 2005 ABQB 512 (697604) apply in this case. In 697604, the Court found the MGB erred when it failed to rely on evidence of value provided by the recent sale of the subject property. The Court in 697604 relied upon *Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd. et al.* (1984), 47 O.R. (2d) 766 (Ont. H.C.J. Div. Ct.) at p. 767:

...the price paid in a recent free sale of the subject property itself, where, as in this case, there are neither changes in market nor to the property in the interval, must be powerful evidence indeed as to what the market value of the property is. It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing the market value of that property.

...

...I think that generally speaking the recent sale price, if available as was the case, is in law and, in common sense, the most realistic and the most reliable method of establishing market value.

[29] The Board was cautious in its consideration of the sale of a property that is three years old. However, without any evidence to the contrary, the Board considers it appropriate to accept the time-adjustment factors provided by the City from the date of sale to the valuation date. As

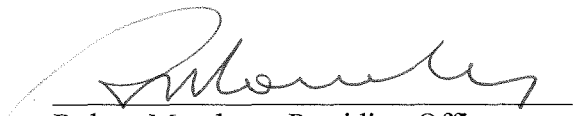
such, the time-adjusted sale price of the subject at \$3,277,500 is the best indicator of market value.

Dissenting Opinion

[30] There was no dissenting opinion.

Heard commencing October 10, 2013.

Dated this 29th day of October, 2013, at the City of Edmonton, Alberta.


Robert Mowbrey, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Cherie Skolney
Marcia Barker
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.