

Edmonton Composite Assessment Review Board

Citation: HANGAR 11 CORP v The City of Edmonton, ECARB 2012-000467

Assessment Roll Number: 9965182

Municipal Address: 11760 109 STREET NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

HANGAR 11 CORP

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

John Noonan, Presiding Officer

George Zaharia, Board Member

Petra Hagemann, Board Member

Preliminary Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board members indicated no bias in the matter before them. At the request of the Respondent's legal counsel, all parties were sworn in.

[2] The Board received a hand delivered letter from Wood Law Office advising that due to a schedule conflict, counsel for the owner would be unable to attend the hearing. The letter advised that Mr. Harold, an outside consultant to Hangar 11 Corp, would present the case. The Respondent noted that Mr. Harold lacked the required Assessment Complaints Agent Authorization form, contrary to *Matters Relating to Assessment Complaints Regulation* AR 310/2009 (*MRAC*) s 51. The Board took an extended recess after which the agent authorization form was presented and the hearing proceeded.

Background

[3] The subject property, known as Hangar 11, was built in 1942 has an area of 74,313 square feet (sq. ft.) which includes main floor hangar space as well as three stories of offices and shops located in the east and west annexes flanking the hangar. The building is located on the east side of the Edmonton City Centre Airport, and is owned by Hangar 11 Corp. The land area of 127,815 sq. ft. is sub-leased from the Edmonton Regional Airport Authority (ERAA), lessee to the City of Edmonton. It is zoned MA2 (Municipal Airport Industrial) with a land use code of 502 (aircraft services and storage). This special-use building was assessed by the cost approach at a depreciated value of \$1,319,964 and the leased land at \$1,628,058 by direct sales comparison. The total 2012 assessment is rounded to \$2,948,000.

Issue(s)

[4] The Complainant's presentation objected to the assessed value for the following reasons:

- a) The land cannot be used for its original intended use;
- b) The building owned by Hangar 11 is subject to an obsolescence adjustment;
- c) The land is 100% exempt as an airport under MGA 362(1)(o); and
- d) The land and building floor are 100% exempt under MGA 362(1)(d)(iv) as being held by students association of a technical institute.

In the course of the hearing issue d) was withdrawn.

Legislation

[5] 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 362(1) The following are exempt from taxation under this Division:

- o) property
 - (i) owned by a municipality and used solely for the operation of an airport by the municipality,
 - (ii) held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;

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.

[6] The Matter Relating to Assessment Complaints Regulation reads:

Matters Relating to Assessment Complaints Regulation AR 310/2009

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 51 An agent may not file a complaint or act for an assessed person or taxpayer at a hearing unless the assessed person or taxpayer has prepared and filed with the clerk or administrator an assessment complaint agent authorization form set out in Schedule 4.

Position of the Complainant

[7] The Complainant submitted an extensive brief (C-1) containing 34 pages and 12 tabs with supporting evidence outlining their complaint. It is the Complainant's position that the 2012 assessment of the subject property does not take into account economic and functional obsolescence.

[8] A rebuttal document with five tabs (C-2) was also presented to the Board. The Respondent challenged tabs 1, 2 and 3 as new evidence which did not rebut material in the City's presentation. Following discussion on this matter, the Board disallowed these three tabs and only accepted tabs 4 and 5 as rebuttal evidence.

[9] The Complainant familiarized the Board with the history of the subject property to demonstrate that the assessment of the leased land and the building if not totally exempted should be reduced from \$2,948,000 to \$1,300,000.

[10] The Complainant stated that no disclosure regarding the details of the assessment of Hangar 11 had been received from the City and when visiting their website, no information had been available.

Land Value

[11] The Complainant directed the Board to Tab 2, a lease agreement between the City of Edmonton and Edmonton Regional Airports Authority (ERAA) dated March 1996, allowing the tenant to operate the lands as an airport for a period of 56 years (C-1, pg 5).

[12] Tab 3 referred to a 25 year sub-lease of Hangar 11 Corp. from ERAA dated April 1 1998. It states that; *"the lessee shall use the leased premises primarily for the purpose of the sale, leasing, storage, maintenance, repair and overhauling of aircraft; warehouse, shop and office use associated with aircraft and airport operations including renting out space in the building on the leased premises to aircraft operations and any business associated with the aerospace industry"*. Canada Air R.V. was the major tenant at that time. The Complainant informed the Board that the above is the highest and best use of the subject, but is not its current use. Therefore, its market value has been reduced significantly.

[13] The Complainant advised the Board that the first amendment to the lease between ERAA and Hangar 11 Corp. was made December 20, 1999 significantly reduced the leased area of the airport lands to 11,874 square metres (sq. m.) and reduced the yearly lease payments from \$65,270 to \$32,000 for the balance of the term (C-1, tab 3).

[14] The Complainant informed the Board that during 2003 there was a flurry of negative press (C-1, tab 9) regarding the future of the airport. This same year the anchor tenant vacated the premises of the subject. Hangar 11 was suffering financially and applied to ERAA to change the use of the building; this was denied (C-1, pg 13, par 10).

[15] The Complainant stated that after a lengthy arbitration process a second amendment to the lease (C-1, tab 6) dated February 17, 2005, allowing a change of use was executed. The alternative uses allowed the main floor hangar space to be used for general shop use, automotive and equipment repair; the welding shop for general welding and the office space in the annexes for general office space, commercial schools, professional and office support services etc. (tab 6, pg 2). This amendment further stated that *"in addition, the lessee and ERAA must go through*

the appropriate process of obtaining the consent of the City Manager as required under section 25.1 of the Head Lease”.

[16] The Complainant submitted that the uncertainty surrounding the future of the Airport persisted until 2009 and then worsened with the City’s announcement that the airport would be closed. Bylaw 16033 was prepared which effectively restricted any further development or improvements on the lands. Given the severe and ongoing restrictions imposed upon the Airport by the City prior and post to its published redevelopment plans, the Complainant is of the opinion that the assessment of the leased land at \$1,628,058 is in excess of its market value. The Complainant argued that the land should be valued at \$1,500,000 with a 50% manual adjustment to yield \$750,000.

Building Value

[17] The Complainant advised the Board that the assessment of the subject building as a special use building is based on the cost approach. This is based on the highest and best use principle, however due to the above developments and restrictions imposed by the City, the Complainant is prevented from using the premises as per its highest and best use i.e. aviation related activities as spelled out in the sub-lease from ERAA. Due to the uncertainty of the closure of the airport, the subject has lost its long term tenants and its current revenue is only from short term monthly rentals.

[18] The Complainant submitted that the original cost of the Hangar 11 building was determined as per bill of sale, dated April 1, 1998 when it was purchased from ERAA for \$100,000 (C-1, tab 4).

[19] The Complainant informed the Board that an appraisal by Bourgeois & Company (C-1, tab 8, pg 4) dated January 2003 valued the building at \$850,000.

[20] At the end of 2003 after considerable negative press re the future of the airport, ERAA made an offer to purchase the building for \$250,000 (C-1, tab 10) and terminate the lease on the land. This sale was to close March 31, 2004, however was not accepted by Hangar 11 Corp.

[21] The Complainant listed several reasons why the assessment of the building at \$1,319,964 is excessive (C-1, pg 16). The Complainant stated that Hangar 11 is a 70 year old building and functional obsolescence should apply to the improvement. Following are some of the reasons identified by the Complainant: The building has limited use and cannot be used for its intended purpose. The future of the airport lands is uncertain. The lease payment was reduced by 50%. The Hangar floor can only be used for indoor parking. The only revenue producing areas available given City restrictions are the east and west office annexes (C-1, pg 33) of 32,000 sq. ft. representing 50% of the building. Furthermore the second amendment specifies that potential tenants must first be approved by the City Manager. This process is time consuming and not helpful for short term tenancies. Income for the property in 2011 was less than half of that in 2002 dollar for dollar, i.e. with no allowance for escalation.

[22] The Complainant suggested (C-1, pg 28) that the property should be exempted from taxation as per MGA 362(1)(o)(i) *“owned by a municipality and used solely for the operation of an airport by the municipality, or (ii) held under a lease, licensee or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee”*.

[23] The Complainant concluded (C-1, pg 33) a manual approach should be applied to provide a fair and equitable intuitive judgment of the economic and market restrictions imposed by the City Centre Airport environment and proposed the following values:

Land value of \$1,500,000 x 50% manual adjustment = \$750,000

Building value of \$1,100,000 x 50% obsolescence (limitations) = \$550,000.

The Complainant requested a reduction in the 2012 assessment to \$1,300,000.

[24] In rebuttal the Complainant submitted that the adjacent Hangar 8 used by the Respondent as an equity comparable to the subject property, was sold in May 2008 for \$900,000. The Complainant argued that this property being approximately 70% of the size of the subject (C-2, tab 4) further indicates that the assessment of the subject is excessive and not equitable.

Position of the Respondent

[25] The Respondent submitted a 54 page brief (R-1) in support of the 2012 assessment of the subject property. This brief included photos of the subject and its location at the Edmonton Municipal Airport, Land Detail Report illustrating the assessment of the land area (Ex. R-1, pg 8) and a Marshall Swift report outlining the calculation of value for the building based on the cost approach (R-1, pg 9-12).

[26] The Respondent advised the Board that the subject building, being a special use property had been assessed on the cost approach to value. The building was constructed in 1942 and despite renovations its effective age had not changed. Maximum allowable depreciation of 80% has been applied, however no functional obsolescence allowance has been applied as the building is still being used to generate income. The land portion is valued at \$1,628,058 and the building, after applying the 80% depreciation, is valued at \$1,319,964 for a total rounded assessment of \$2,948,000.

[27] The Respondent provided the Board with nine comparable land sales (R-1, pg 17 and 47-53) located in northwest Edmonton. These properties sold from January 2007 to September 2009 for a median time adjusted sales price of \$638,574 per acre and an average of \$589,950 per acre. The sales evidence more than supported the land assessment of the subject at \$554,854 per acre.

[28] The Respondent included the assessments of 15 properties along Airport and Flight Line Roads surrounding the Municipal Airport to illustrate that the assessment of the subject is also equitable. These properties vary in land size from 1.56 acres to 8 acres and carried per acre valuations from \$490,000 for larger parcels to just under \$600,000 for the smaller parcels. The subject, at 2.934 acres, was well within the range at \$554,484 per acre.

[29] The Respondent replied to the Complainant's submission (R-1, pg 24) that the Hangar 11 lands should be 100% exempt as an airport under MGA, 2000, Sec 362(1)(o). This section reads: *"...held under a lease, license or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;"* Under the original land lease as stated in the Complainant's submission (C-1, pg 6) the use of the property was limited to the operation of an airport. However in the Second Amendment to the lease (C-1, tab 6) the use of the property was

expanded to allow for uses other than those associated with the operation of an airport (R-1, pg 33-35). Furthermore the Respondent noted (R-1, pg 36) it is a requirement of the City to apply for this exemption and no such evidence has been provided to the Board. The Respondent therefore requested the Board confirm the exemption at 0%.

[30] As to the Complainant's claim that no disclosure regarding the details of the assessment had been provided, the Respondent advised the Board that no request for information as per *MGA* s. 299 and s. 300 had been received from the Complainant.

[31] In reply to the Complainant's rebuttal regarding the sale of Hangar 8, the Respondent submitted that this sale included not only the building, but the leases and all their obligations. To draw a proper conclusion as to the comparability of the two properties, each lease would need to be evaluated and no such evidence was provided to the Board.

[32] Based on their evidence, the Respondent requested the Board to confirm the 2012 assessment of the subject property at \$2,948,000.

Post October 1, 2012 Hearing

[33] After the close of the hearing, the Board asked the Respondent to provide the answer to a question that had arisen during the presentation of their evidence. The airport equity comparables presented by the Respondent (R-1, pg 18) included a property adjacent to the subject known as Hangar 8. The assessments of the leased lands were similar; however, the Hangar 8 building was assessed at \$295,485 compared to the building assessment of the subject at \$1,319,964. The Complainant was very familiar with the neighbouring Hangar 8 which is approximately 70% the size of the subject and questioned how these building assessments could be considered equitable. The Respondent could not immediately verify the correctness of Hangar 8's building assessment but undertook to provide this information by email the following day.

[34] The Respondent replied to the request by email providing details as to how Hangar 8 compared to Hangar 11 in size, classification, and valuation. It was also stated that both properties had been inspected.

[35] After several more emails, legal counsel for the Respondent raised the concern that new issues had been raised concerning the size of Hangar 11 and its comparability to Hangar 8. These issues had not been stated on the original complaint form. It was the Respondent's position that had this issue been identified, the evidence and disclosure of the City would have been completely different. The Respondent submitted that the CARB cannot alter the assessment of the subject property based on inequity with Hangar 8 since this issue was neither identified on the original complaint form, nor in the Complainant's disclosure. The Respondent felt ambushed; procedural fairness had not been followed.

October 19 - Reopening of Hearing

[36] In the interest of procedural fairness the Board asked the parties to attend a reopening of the hearing to provide argument as to the concerns that had been expressed as a result of additional information provided by both parties during the exchange of emails.

[37] The Respondent advised that as per MRAC s 9(1) the Board must not hear any issue not identified on the complaint form and not disclosed as per MRAC s 9(2). The issue of equity with Hangar 8 had not been identified on the complaint form and no mention of Hangar 8 other than in the rebuttal (C2, tab 4) had been made by the Complainant. The Respondent suggested that the Complainant, Hangar 11 Corp, could have come back in rebuttal to question the equity of Hangar 8, which would have given the City opportunity to submit the differences in sur-rebuttal. As it was, the emergence of a comparability issue after the hearing placed the Respondent at a disadvantage. Had the issue been presented properly, the Respondent's evidence package would have fully addressed such issue and illustrated the differences between the two properties. The Respondent further suggested the Board had no jurisdiction as per MGA 465 to request information from the City after the hearing was closed.

[38] The Complainant suggested that the complaint form which stated that "the assessment is too high" implied that this could be based on comparable sales and equity which would include Hangar 8. Hangar 8 was also addressed in the rebuttal to the Respondent's evidence.

[39] After presenting their positions, both counsel agreed that any information which had gone beyond the original question of the correctness of the assessment of the building of Hangar 8 should be disallowed.

[40] The Board is gratified that the parties agreed that additional information and argument from the email exchange ought to be excluded.

[41] The Board disallows any evidence provided by the parties after the hearing of Oct 1, 2012 with the exception of the verification that the assessment of the Hangar 8 building is correctly stated at \$295,485 in the Respondent's brief (R-1, pg18).

Decision

[42] The Board reduces the 2012 assessment from \$2,948,000 to \$2,288,000.

Reasons for the Decision

[43] With regard to Issue 4 c) that the land is 100% exempt as an airport under MGA 362(1)(o), the Board is directed by MGA 362(1) that states, "*the following are exempt from taxation under this Division: (o)(ii) property held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee*". The Board finds that as per the second amendment to the lease, the subject land had its permitted use changed to allow operations other than those connected with an airport and therefore does not meet the test of "**solely**". The Board consequently rejects the request for 100% exemption from taxation of the subject land.

[44] In respect to the assessment of the leased land, the Board was persuaded by the evidence provided by the Respondent. The nine comparable land sales in northwest Edmonton with time-adjusted sales prices ranging from \$389,951 to \$719,112 per acre, resulting in a median of \$638,574 and a mean of \$589,950, supported the \$554,854 per acre land assessment of the subject property. This land assessment was further supported by the equity comparables along Airport and Flight Line Roads ranging from \$490,434 to \$599,727 per acre.

[45] With regards to the assessed value of the building owned by Hangar 11 Corp, the Board acknowledges the Respondent's explanation that the improvement has been depreciated as per Marshall and Swift to a maximum 80% of its replacement cost new (RCN). However the Board is of the opinion that the resulting assessed value of the building would be appropriate if it were still used for its original purpose: uses specifically suited to aviation related activities. It is clear that the original uses identified in the 25 year lease of Hangar 11 Corp from ERAA dated April 1, 1998, are not the uses in 2011. In short, the use was identified as activities "associated with aircraft and airport operations" which could be considered its highest and best use.

[46] However, the Complainant was forced to abandon the original highest and best use due to the publicly discussed closure of the airport. This led to the "Second Amendment to Lease" dated Feb 17, 2005 that added additional uses, none related to the aviation industry. In the Board's opinion, this has negatively affected the market value of the subject building.

[47] The Board is persuaded by the Complainant's argument "*that the proper approach in its property tax assessment should be by way of the manual approach to provide a fair and equitable intuitive judgment of the economic and market restrictions imposed by the City Centre Airport environment*".

[48] In determining a fair assessment for the building, the Board reviewed the history of the subject: April 1998 the building was purchased for \$100,000. January 2003 Bourgeois & Company appraised the building at \$850,000. At the end of 2003 after considerable negative press re the future of the airport, ERAA made an offer to purchase the building for \$250,000 and terminate the lease on the land. This offer represents a drop in value of \$600,000 from the appraised value by Bourgeois earlier that same year which could be attributed to the flood of negative press concerning the future of the airport.

[49] Consequently the Board reduces the building assessment by 50% from the original \$1,319,964 to \$660,000 (rounded) resulting in a total assessment of the subject property of \$2,288,000.

[50] The Board is persuaded that a reduced 2012 assessment of \$2,288,000 is a reasonable estimate of the subject's market value.

Heard commencing October 1, 2012.

Dated this 19th day of November, 2012, at the City of Edmonton, Alberta.

John Noonan, Presiding Officer

Appearances:

Michael Harold, Hangar 11 Corp.

Laurie Wood, Legal Counsel
for the Complainant

Cameron Ashmore, Legal Counsel

Doug McLennan, Assessor

Moreen Skarsen, 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.