

Edmonton Composite Assessment Review Board

Citation: 593066 Alberta Ltd. v The City of Edmonton, ECARB 2012-001335

Assessment Roll Number: 3933595

Municipal Address: 10520C 120 STREET NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

593066 Alberta Ltd.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Robert Mowbrey, Presiding Officer

Dale Doan, Board Member

Petra Hagemann, Board Member

Preliminary Matters

[1] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. Each of the Board Members declared that they had no bias on this matter.

Background

[2] The subject property is undeveloped multi-residential condominium land located at 10520C 120 Street in the Queen Mary Park neighbourhood. The lot size as stated on the Land Detail Report is 4,620 square meters (49,729 square feet), zoned RA7 with a site specific development control provision of DC5. The subject is the remaining undeveloped lot (unit 3) of a condominium project. The subject is assessed based on the direct sales comparison model and is assessed at \$871,500.

Issue(s)

[3] Has the City calculated the size of the subject property correctly and applied the correct assessment?

[4] Has the subject been correctly assessed based on its current use as park and common property for the existing condominium buildings?

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 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 assessment of \$871,500 was inequitable and in excess of market value. The Complainant submitted a 34 page brief (Ex. C-1) contesting the correctness of the assessment of the subject property.

[7] The Complainant advised the Board that the actual size of the subject is 13,797 square feet (sq. ft.) (.316 acres) and should be assessed on that basis. The assessment is based on 49,729 sq. ft. (1.142 acres) which is a scaled up size based on the condominium Unit Factors assigned to the property from the condo plan.

[8] The Complainant stated that the original land was approximately six acres in size which subsequently was divided into three bareland condominium units: Unit #1 approximately 3.5 acres, was developed into 176 apartment condo unit; Unit #2 approximately 2.25 acres, was developed into 111 apartment condo units; Unit #3, the subject .316 acres in actual size has yet to be developed beyond basic landscaping.

[9] The Complainant confirmed that originally the surveyor assigned 2,367/10,000 unit factors to Unit #3. Units #1 and #2 were later developed under plans 9422090 and 9323130. These developed units have exclusive use agreements in place for the existing common property which is used for parking and takes up the entire common areas of Units #1 and #2. Unit #3 has no right of use to these common areas.

[10] The Complainant referred the Board to the Edmonton Zoning Bylaw 12800 (Ex. C-1, pg 19) which outlines the parking requirements for multi-residential units. Based on these requirements, the site would need 450 stalls for both unit #1 and #2. Currently there are only 413 stalls on site which leaves none available for Unit #3, the subject property.

[11] The Complainant argued that since the subject property does not have any common property available for the required parking once the property is developed, parking would have

to be built on site, possibly underground. This would negatively impact market value. The Complainant further stated that since the subject property does not have access to the common areas of Unit #1 and #2, the size should not be grossed up by the 2,346/10,000 shares in the common area to arrive at an inflated size of 49,728 sq. ft. but rather be assessed based on its actual size of 13,797 sq. ft.

[12] The Complainant applied a unit factor of \$17.52 per sq. ft. to the actual size of 13,797 sq. ft., and therefore asked the Board to reduce the assessment of the subject property to \$241,500.

Position of the Respondent

[13] The Respondent submitted a 43 page brief (Ex. R-1) to defend the assessment of the subject property.

[14] The Respondent advised the Board that the MGA 290.1(1) specifies that when assessing a condominium unit, the share assigned to it for the common area must also be assessed. When the condominium plan was registered, a 2,367/10,000 unit factor was applied to the subject property which represents its share of the common areas. This explains the reason for assessing 49,728 sq. ft. rather than the actual size of 13,797 sq. ft.

[15] The Respondent directed the Board to Exhibit R-1, pg 18 which shows a plan of the area where the subject is located indicating that the development of the subject is not restricted as it can be serviced.

[16] The Respondent referred to a Land Title Certificate showing the transfer of the subject lands June 29, 1994 in the amount of \$980,000. This sale occurred after the completion of condominium Units one and two and shows no encumbrance on title regarding the exclusive use agreements referred to by the Complainant.

[17] The Respondent explained the calculation of the grossed up land size (Ex. R-1, pg 37) to the Board showing how the 2012 assessment in the amount of \$871,500 was derived.

[18] The Respondent argued that the Complainant had provided no evidence of cost to build an underground parkade on the subject property to accommodate the loss of parking on the common property.

[19] Based on the above evidence, the Respondent requested the Board to confirm the 2012 assessment at \$871,500.

Decision

The decision of the Board is to reduce the 2012 assessment of the subject property from \$871,500 to \$242,500.

Reasons for the Decision

[20] The Board was persuaded by the evidence provided by the Complainant regarding the exclusive use agreement attributed to Units #1 and #2, which eliminates access to the common areas for parking for the subject if it is developed into multi-residential units as per its zoning. The Board agrees that this is a concern and would negatively affect market value.

[21] The Board agrees with the Complainant that additional costs would be incurred by a potential purchaser of the subject to accommodate onsite parking in order to comply with Edmonton Zoning Bylaw 12800 (Ex. C-1, pg 19).

[22] The Board is cognizant of the sale of the subject property, however no time adjustments had been provided by the Respondent and no further details were available to evaluate the sale as at market value. The Board noted that no liens or restrictions had been registered on title at the time of this sale. The Board believes the exclusive use agreement put in place on unit one and two encroached on the subject property and therefore lowered the market value of the subject property.

[23] The Board acknowledges that a condominium unit factor should be applied to a property to assess its benefit of the common areas of the development. However, based on the exclusive use agreement in place, the subject property derives no benefit from the common areas and therefore should not be assessed accordingly.

[24] The Board finds that the actual size of the subject property of 13,797 sq. ft. should be reflected in the assessment and therefore reduces the 2012 assessment to \$241,500.

Dissenting Opinion

[25] There was no dissenting opinion.

Heard commencing September 14, 2012.

Dated this 28th day of September, 2012, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

Chris Buchanan, Altus Group

Kerry Reimer, Altus Group
for the Complainant

Jerry Sumka, Assessor, City of Edmonton
for the Respondent