Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, ECARB 2012-920

Assessment Roll Number: 3167608
Municipal Address: 10165 107 STREET NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
John Noonan, Presiding Officer
Jasbeer Singh, Board Member
John Braim, Board Member

Procedural Matters

[1] At the beginning of the hearing the parties stated that they had no objection to the composition of the Board. In addition, the Board Members indicated that they had no bias on these complaints.

[2] Witnesses giving testimony were either sworn in or affirmed, the choice being that of the individual witness.

[3] The Complainant, Altus Group Ltd., filed forty-six complaints on behalf of various taxpayers. At issue is the correct rate per square foot that is to be used to calculate the land assessment. The improvement assessments for pavement, if applicable, are not at issue.

[4] The Complainant and Respondent requested the Board to hear all of the complaints and carry forward the evidence and argument from the first hearing to the balance of the hearings. However, each complaint is to be heard separately and sequentially. The Board agreed with the request and heard the complaints on September 19, 2012 and September 20, 2012. A separate decision will be rendered for each of the complaints.

Background

[5] The subject is a vacant 7,445 sq. ft. lot located at 10165 - 107 Street in downtown Edmonton. Like other vacant lots downtown, the 2012 assessment has been prepared using the

cost approach, which incorporates a depreciated cost of improvements, paving where applicable, with the land value determined by the sales comparison method.

[6] The evidence and argument heard for this file was all brought forward from the master file 3097607. There were minor differences with respect to size, improvements, etc. i.e. depreciated value of paving, or corner lot adjustments.

Issue(s)

[7] The Board heard evidence and argument on a single issue:

Does the sales evidence show the subject is assessed at greater than market value?

Sub-issue:

Should three of the sales comparables advanced by the Complainant be considered valid market transactions?

Legislation

[8] 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

[9] The Complainant requested a reduction in the assessment to $872,000. This amount reflected a land value of $116.50 per sq. ft. rather than the $124.27 per sq. ft. employed in the assessment.

[10] The Complainant directed the Board's attention to a 2011 CARB decision regarding similar downtown vacant land. That decision had considered the sales comparables presented by both parties and had settled on seven sales as good value indicators for vacant downtown parcels. Two of the sales occurred in 2007 and five in 2006. The same seven sales relied upon in last year's CARB decision were advanced as comparables this year, with the addition of one more recent sale dated July 27, 2011, slightly post-facto the valuation date of July 1, 2011. These eight sales all carried the same commercial zoning – CB2- and their time-adjusted sales prices showed a range of values from $98.31 to $176.97 per sq. ft. The median value was $116.62 and formed the basis for a requested reduction in assessment to $116.50 per sq. ft.

[11] The Complainant advocated the use of 'median' of the time adjusted sales prices of the eight sales comparables presented to the Board. Citing from an appraisal text the Complainant quoted, *'The median has the advantage of discounting the effects of extreme values, thus better capturing the typical price trends (a trimmed mean could be used to the same advantage)*'. (C-1, page 12).

[12] Quoting from the Alberta Assessor Association's valuation guide, the Complainant advised the Board that *'.....the measure of central tendency selected should be the one that best reflects the average or typical property characteristics. In this analysis, the median is often selected as the measure to use.'* (C-1, page 15).

[13] In response to questions, the Complainant stated the following;

a. The Complainant's argument relied solely on the use of the 'median' in preference to the average of the values in respect of the sales comparables. In the Complainant's opinion, the averages 'skew' the results.

b. The Complainant did not include any consideration for the 'corner' location attribute in respect of any of the properties under complaint. The Complainant argued that no evidence had been presented that warranted such an adjustment.

Position of the Respondent

[14] The Respondent presented a 130 page assessment brief and a law & legislation brief (Exhibit R-1) to the Board. The Respondent acknowledged a lack of comparable sales activity for vacant downtown lots. The Respondent advanced five sales comparables, all of which were also found in the Complainant's selection of eight comparables, that included the newer July 2011 sale. These five sales produced a time-adjusted average sale price of $136.13 per square foot and supported the subject's 2012 assessment of $930,000.

[15] Respondent's Sales Comparables (R-1, page 10)

	Address	Site Area	TASP/sq. ft.
1	10178 103 Street NW	15,002 sq. ft.	$176.95
2	10233 105 Street NW	7,499 sq. ft.	$143.90
3	10350 105 Street NW	22,188 sq. ft.	$126.59
4	10519 104 Avenue NW	15,000 sq. ft.	$116.67
5	10163/69 108 Street NW	15,000 sq. ft.	$116.57
		Average	$136.13

[16] The Respondent raised concerns about three of the sales utilized by the Complainant:

- 10204 105 St – an April 2007 sale at a time-adjusted $103.94 per sq. ft.
- 10160 106 St - an April 2006 sale at a time-adjusted $98.26 per sq. ft. and;
- 10120 108 St - a January 2006 sale at a time-adjusted $115.66 per sq. ft.

[17] The 10204/30 105 Street sale involved five lots comprising 37,500 sq. ft. The purchaser was the City of Edmonton. The transaction occurred in 2007 at a price of $89.33 per sq. ft., now time-adjusted to $103.94.

a. E-mail correspondence was introduced in evidence giving some history to this sale: it followed, by some two years, an earlier agreement between the principals that was rejected by the City Council. As part of the original sale process, the City commissioned "in house and fee appraisals…for an indication of market value."

b. When the transaction was resuscitated two years later, again "in house and fee appraisals were completed for an updated indication of market value." Council instructed the relevant department (AMPW) to purchase the lands at market value. A price was negotiated that was less than the updated "indication of market value."

c. The Respondent acknowledged the appraisal reports were not in evidence, so it is not known as to how much less than the indication of market value the property transacted. Nonetheless, the Respondent argued that for reasons unknown, the City paid less for this property than they thought they should.

d. However, The Board should adhere to the legislation and be instructed by an excerpt from the Minister's Guidelines under *Matters Relating to Assessment and Taxation Regulation* 220/04:

Sales to or from government agencies should be rejected, particularly if duress or philanthropy are involved. Government sales can be included only if made on the open market with both parties seeking the best possible price.

In this case, there is doubt whether this sale is usable for valuation purposes. As the City approached the vendor, was the property exposed to the open market? Because the earlier sale agreement failed, was the vendor here seeking the best possible price? As to the Complainant's point regarding an affidavit of value filed with the land transfer document at Land Titles, the Respondent observed that all sales have this affidavit, which is a requirement of filing. As to other Boards' use of this sale in other decisions, one cannot know what evidence those panels saw.

[18] The 10160/68 106 Street sale was the most interesting of the three questionable sales. An inspection of the transfer documents showed that 1014844 Alberta Ltd. sold the property on March 30, 2006 for $1,554,000. This transaction is advanced by the Complainant as a valid comparable. However, the vendor did not acquire the property (from the original owner, Craig

Buildings Ltd.) until April 5, 2006. Effectively, the vendor sold the property before having title and therefore, there is no possible way the property could have been on the open market. Consequently, this sale does not meet the definition of a market value transaction. Although this sale was used in the valuation model, and had been cited by the City as a valid comparable in other cases, it was now questioned as more details were available.

[19] The 10120 – 108 Street sale, while downtown, was in a premium valuation location that carries JASMC (Jasper Avenue Main Street Commercial) zoning, thus a questionable comparable for the subject's valuation. Additionally, this sale was deemed to be out-of-the ordinary because:

a. The vacant lot was sold as a part of an adjoining office property sale.

b. There was no evidence of any exposure on the open market prior to the sale.

c. The owners of this property (Lot 87) transferred the land to Luxor-Mesa West for $640,000 by an agreement amended January 17, 2006. However, the purchase price was paid by 991801 Alberta Ltd., the same entity that sold the neighboring office building (Lots 88-91) to Luxor-Mesa West. This was an unusual transaction.

[20] The Respondent argued that the average of all eight of the Complainant's sales comparables yielded an average time adjusted sale price of $124.89 per square foot that clearly supported the subject's 2012 assessment of $124.26 per square foot.

[21] The Respondent further argued that even if the two outlier sales (#1 and #4) on the Complainant's list were excluded, the average time adjusted sale price of $120.63 per square foot adequately supported the subject's 2012 assessment of $124.26 per square foot.

[22] The Respondent advised the Board that if three of the sales, objected to by the Respondent, were excluded from the Complainant's set of eight (C-1, page 8), the remaining five comparables showed an average time adjusted sales price of $136.17 per square foot, that clearly supported the subject's 2012 assessment of $124.26 per square foot.

[23] The Respondent provided a summary of differing zoning bylaws applicable to downtown properties. This summary showed the differences in developmental opportunities for various zones in the downtown core. (R-1, pages 71-81). Three different assessment rates were applied to differently zoned parcels of downtown vacant land. (R-1, pages 128-129).

Complainant's Rebuttal

[24] The assessor has asked the Board to discount the sale at 10204 – 105 Street (TRN 3139102) because it was purchased by the City of Edmonton. This is not the first time the assessors have asked the Board to do this and in each instance, the Board has rejected the assessor's assertion that the sale was invalid. (C-2, page 3).

[25] The assessor has asked the Board to discount the sale at 10160 – 106 Street (TRN 3170859). However, in numerous other briefs, the assessment department has brought this sale

forward as a valid sale in support of their assessments. In numerous decisions of the Board from 2011 and 2012, the Board has deemed this transaction valid. (C-2, page 3).

[26] The assessor has asked the Board to discount the sale at 10120 – 108 Street (TRN 3221306). However, in numerous other briefs, the assessment department has brought this sale forward as a valid sale in support of their assessments. In numerous decisions of the Board from 2011 and 2012, the Board has deemed this transaction valid. (C-2, page 3).

[27] To illustrate these points, the Complainant referred to: a 2011 CARB decision for roll 3072709 where two of the impugned sales, 108 St. and 106 St. had been used as Respondent comparables; a 2012 CARB decision for roll 3137304 where all three of these sales had been discussed in the Board's reasons and found valid; excerpts from 2011 and 2012 City of Edmonton assessment briefs where the 106 St. and 108 St. sales were advanced as Respondent comparables; and another CARB decision where the Board accepted the 105 St. sale due to comparability of zoning and location, as well as the interest of not limiting the sample to too selective a number (in that case, six sales) that would misrepresent the market.

[28] The Complainant presented a list of downtown parking lots with CMU, EZ, HA, and RMU zoning. All were assessed at a land rate of $124.26 per sq. ft. It was further noted that these zonings (except RMU) permitted Floor Area Ratios (FAR) of 6, 7, and in the HA area, 8 and 10. Again, there was no difference in assessment rates per sq. ft.

Respondent's Surrebuttal

[29] The Respondent introduced the 2012 CARB decision for roll 3940533 which had not accepted the Complainant's argument that the median is a better indication of value than the average.

Decision

[30] The Board confirms the assessment of $930,000 for 2012.

Reasons for the Decision

[31] The Board notes the requested assessment rate of $116.50 per sq.ft. is 6.24% less than the $124.26 per sq.ft. rate applied. The eight sales submitted by the Complainant produce an average time-adjusted price per sq.ft. of $124.89 and if one were to exclude the top and bottom outliers, the average of the six remaining sales is $120.63 per sq.ft. All these numbers are within a tighter range of value than the Board is accustomed to seeing at dispute.

[32] The parties advanced some degree of argument over the appropriate use of median versus average values. The Board has deliberately not chosen to recognize this debate as a full blown issue, the easiest reason being that it was not identified as a complaint form issue. Rather, this argument centres on judgment or analysis of the evidence, and both parties have good and reasonable points on offer. Both parties can point to decisions of other panels where median was

preferred to average, or vice versa. In this case, the Board is examining a small number of sales, some dating to 2006 to find a fair estimate of market value as of July 1, 2011. A reading of some of the ARB decisions presented shows that this small number has already been weeded of contaminated property and high and low outliers. The weeding process has at least partially accomplished the work and benefit of using the median. The text cited by the Complainant, illustrating the preferred use of medians, was in the context of plotting sales to assessment ratios of 148 sales over a period of 24 months. Here, the Board is dealing with eight sales at maximum. In such a small sample, the selection of the median negates the influence of all the sales in trying to establish a "central tendency". The average reflects that influence and this Board finds it appropriate to establish a typical market value for vacant downtown lots.

[33] The Respondent has, among other concerns, questioned whether three of the Complainant's sales were valid open market transactions. Specifically, the City sees no evidence of the properties being advertized for sale or listed. The concern, obviously, is that lack of exposure to a traditional 'for sale' process would limit the number of potential buyers and result in a sale price less than what might be achieved otherwise. Included in the Respondent's evidence was Municipal Government Board Decision Letter 132/08 which grappled with the concept of an "open market" transaction, in that case a luxurious riverfront residence in Calgary that sold privately for under $4 million when it was assessed at more than $5.5 million. Interestingly, DL 132/08 summarized a part of the appellant's position, "As well, the case law does not say that there is a requirement for the property to be extensively advertised or listed on MLS to be considered an open market sale." There was no elaboration on this comment, but the Board suspects that the City's preference for a property to be listed to be considered an open market sale might well be just that, a preference and not a requirement. In any event, the Board sees a difference between a luxurious riverfront residence and a vacant downtown lot used for parking. Implicitly, the parking lot is in a holding pattern awaiting a reasonable offer. It does not usually need a "For Sale" sign or billboard for market participants to understand it is for sale.

[34] The Board is inclined to accept the 105 St. sale, where the purchaser was the City, as a valid transaction. There is nothing to suggest that duress or philanthropy are involved; other Boards have looked at this sale and accepted it. The 106 St. sale with problematic dates has also been accepted by other Boards. There could be a number of mundane reasons for the date discrepancy, and the Board is reluctant to winnow the field of sales comparables too rigorously.

[35] The Board does have a problem with the 108 St. comparable. This 7,771 sq.ft. corner lot sold for a time-adjusted $115.66 per sq.ft., and the purchase price was paid by the neighbour, not the party to whom the land was transferred. This decision made earlier reference to prior CARB decisions that "weeded" the sales comparables. One of those weeds was 10424 Jasper Ave, about which the 2011 CARB dealing with roll 3072709 found: *This property was purchased by the adjoining owner to consolidate the sites for the Sobeys development and it was not listed on the open market. While this sale may be a valid arms length sale, it does not meet the definition of a "market value" sale as defined in the Act because it was not sold on the open market.* That property was a 3,000 sq.ft. lot that sold for a time-adjusted-to July 2010 price of $178.60. This Board estimates that time-adjusted to July 2011 the price would be about $160 per sq.ft. The implication from the quote above is that a motivated buyer may have paid above market, but had the property been sold on the open market, it might have attracted an even higher price. While this panel entertains a different view of open market, the Board acknowledges the Respondent's point that the 108 St. vendor, in a situation analogous to Sobeys, realized a lot lower price than might have been achieved. The 108 St. property also occupies a corner. Given the questions this 108 St. sale raises, the Board decided to exclude this property as a good comparable.

[36] The Complainant observed that no evidence had been submitted to justify a corner lot premium; the Respondent's model, drawing on sales of commercial properties beyond just the downtown area, incorporates such a premium. The Board acknowledges that the limited sales data from downtown presented at this hearing is "all over the map" and neither proves or disproves this premium. Nevertheless, the Board accepts the concept that especially in non-residential property, a corner location affords greater visibility and accessibility and that these attributes add value.

[37] The seven comparables that the Board found as good indicators of value are located in two different, downtown "study areas" each with different zonings: the Heritage Area and the Urban Warehouse (formerly Enterprise Zone) Area. Vacant lands in these areas, and others, have been assessed at a base rate of $124.26. The Board finds support for that value in the average time-adjusted sale price of $126.16 from the seven comparable sales.

Heard commencing September 19, 2012.

Dated this 16th day of October, 2012, at the City of Edmonton, Alberta.

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John Noonan, Presiding Officer

Appearances:

Chris Buchanan
John Trelford
Kerry Reimer
for the Complainant

Cameron Ashmore
Keivan Navidikasmaei
for the Respondent