

NOTICE OF DECISION NO. 0098 149/12

Altus Group
780-10180 101 ST NW
EDMONTON, AB T5J 3S4

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on August 7, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
1072651	2241 76 AVENUE NW	NE 19-52-23-4	\$3,259,000	Annual New	2012

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.

cc: 583611 SASKATCHEWAN LTD

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, ECARB 2012-000915

Assessment Roll Number: 1072651

Municipal Address: 2241 76 AVENUE NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Dean Sanduga, Presiding Officer

Jasbeer Singh, Board Member

Mary Sheldon, Board Member

Preliminary 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.

Background

[2] The subject property is a parcel of industrial land zoned 'IM' with a total area of 297,927 square feet (6.84 acres). This partially serviced parcel of land, that lacks storm sewer, is located in South-East Industrial neighbourhood. There are some improvements on the property and these have been assessed at \$230,543. The total 2012 assessment for the land and the improvements is \$3,259,000. The assessment value of these improvements is not in dispute. The only issue before the Board is the 2012 assessment of \$3,028,909 for the land component.

Issue(s)

[3] Is the 2012 assessment for the subject property fair and equitable?

Legislation

[4] 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

[5] The Complainant filed this complaint on the basis that the subject property assessment of \$3,259,000 was inequitable and in excess of market value. In support of this position, the Complainant presented a 51-page assessment brief (Exhibit C-1) and a 13-page document rebutting the Respondent’s evidence to the Board (Exhibit C-2).

[6] The Complainant advised the Board that the subject property was sold for \$1,550,000 in 2007 and the time adjusted sale price (TASP) on the valuation date (July 01, 2011), based on the city’s adjustment factors was \$2,080,500. The Complainant explained that the best indication of market value was the sale of the subject property (Exhibit C-1, page 11).

[7] The Complainant presented a set of eight sales comparables (including the sale of the subject in February 2007). Four of the properties included in this table were fully serviced lots. The median of the time adjusted sale prices was shown to be \$8.53 per square foot (C-1, page 12).

[8] The Complainant argued that the sales listed in the table ranged in size from 217,364 square feet (5 acres) to 444,312 square feet (10.2 acres) and were comparable with the subject measuring 297,927 square feet (6.84 acres), (C-1, page 12).

[9] The highest value paid for a similarly zoned (IM) industrial lot was \$10.32 per square foot in respect of sales comparable #4, but this lot was also ‘fully serviced’ (C-1, page 12).

[10] The Complainant argued that a fair and equitable assessment for the subject property should be \$2,081,000. This was based on the city’s assessment of \$230,542 for the improvements and the time adjusted sales price of \$1,850,488, or \$6.21 per square foot for the land component (C-1, page 12).

[11] In response to the Respondent's questions, the Complainant stated that vendor take back (VTB) of 10% until April 2012 in respect of the Complainant's sales comparable #8 (2241 – 76 Avenue) need not have lowered the sale price as 5% - 6% VTB was a common occurrence in industry (C-1, pages 12 & 27).

[12] In response to further questioning, the Complainant stated that an assessment between \$7.50 and \$8.00 per square foot would be the true value of the subject on the valuation date.

[13] The Complainant presented a 13 page rebuttal document to the Board (C-2) and argued that the purchaser for the September 2011 sale of the subject property had been incorrectly stated as '583611 Alberta Ltd.' in the Respondent's evidence (R-1, page 20). The correct purchaser was '583611 Saskatchewan Ltd.' (C-2, pages 2-8).

[14] The Complainant argued that this property had been purchased in September 2011 by a motivated buyer who owned the property immediately to the west of the subject (C-2, pages 9-12) and hence, this sale should not be considered a valid sale by the Board.

[15] Additionally, the assessment for the subject should also be lower on account of its long and narrow shape (C-2, pages 5 & 12) and lack of storm sewer.

[16] The Complainant stressed that in view of its long and narrow shape and lack of full city services, the time adjusted price of the Feb 2007 sale of the subject, provided the best indicator of its market value on the valuation date and requested that the 2012 assessment be reduced to \$2,081,000 (C-1, page 12).

Position of the Respondent

[17] The Respondent presented an 80-page assessment brief (Exhibit R-1) and a 44-page law & legislation brief (Exhibit R-2) to the Board. The assessment brief included six land sales comparables including the September 2011 (post-facto) sale of the subject that support the 2012 disputed assessment of \$3,259,000.

[18] The Respondent stated that all comparable sales were in respect of fully serviced lots and all were located in the South-East quadrant of the city, as was the subject. Average assessment of \$13.80 per square foot, in respect of these comparables, fully supported the subject's assessment at \$10.94 per square foot.

[19] The Respondent stated that many of the Complainant's sales comparables (1, 2, 4 & 5) were in the same neighbourhood that had witnessed significant number of court ordered sales and/or foreclosures. The Respondent suggested that this could have had a negative impact on the Complainant's sales comparables (1, 2, 4, & 5), to render these less reliable indicators of true market value (R-1, pages 21 & 22).

[20] The subject property sold again in September 2011, shortly after the valuation date, for a price of \$3,500,000. The Respondent alleged that this best represented the true market value of the subject property on valuation date (01 July, 2011), as the market had been flat during the intervening period and in all likelihood, the price had been negotiated well before the valuation date.

Decision

[21] The decision of the Board is to confirm the 2012 assessment of \$3,259,000 as fair and equitable.

Reasons for the Decision

[22] Section 1(1)(n) of the *Municipal Government Act*, defines “market value” as 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.

[23] The Board acknowledged that the sale of the subject property in September 2011 was *post-facto*. However, the Board believed that this sale, close to the valuation date provided the most reliable indication of the market value of the subject property.

[24] In the absence of any evidence of this being a ‘motivated’ sale, the Board was satisfied that the sale of the subject parcel of land in September 2011 did represent the market value, even though the purchaser also owned an adjacent parcel of land.

[25] The Board is of the opinion that there are significant issues with the sales comparables presented by the Complainant for the purpose of establishing assessment value for the subject property (C-1, page 12).

- a. Average of the time adjusted sales prices in respect of the 8 comparables presented is \$8.59 per square foot (\$8.82 psf if the subject is excluded), while the Complainant is requesting an assessment value of \$6.21 per square foot for the subject property.
- b. The time adjusted value of the 2007 sale price of the subject has been shown to be \$6.98 per square foot yet the Complainant is inexplicably requesting an assessment value of \$6.21 per square foot.
- c. The Complainant advised the Board that the cited sales comparable #7 (6403/6503 34 St.) was the best comparable with TASP of \$8.82 per square foot. However, the terms of this Feb 2007 sale, “0 cash to \$2,700,000 VTB @ 0% expires Sept/2009” raise serious questions about its true value. (C-1, page 26).

[26] The Board notes that some of the Respondent’s land sales comparables enjoy better location and all are fully serviced. However, the average time adjusted sales price of \$13.80 per square foot supports the subject’s 2012 assessment of \$10.17 per square foot, even after taking into consideration the differential warranted for location of some of these comparables and the lack of storm sewer in respect of the subject.

[27] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. The Board is satisfied that the Complainant did not provide sufficient and compelling evidence for the Board to form an opinion as to the incorrectness of the assessment. Accordingly, the Board accepts the recommendation of the Respondent and confirms the recommended 2012 assessment of the subject at \$3,259,000.

Dissenting Opinion

[28] There was no dissenting opinion.

Heard commencing August 7, 2012.

Dated this 22nd day of August, 2012, at the City of Edmonton, Alberta.

Dean Sanduga, Presiding Officer

Appearances:

Walid Melhem
for the Complainant

Melissa Zayac, City of Edmonton
Will Osborne
for the Respondent