



## ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL  
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### NOTICE OF DECISION NO. 0098 154/10

Altus Group Ltd  
17327 - 106A Avenue  
Edmonton, AB T5S 1M7

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 10, 2010 respecting a complaint for:

<b>Roll Number</b> 3638509	<b>Municipal Address</b> 9601 Jasper Avenue NW	<b>Legal Description</b> Plan:226CL Block: 2 Lot: 4A / 5A
<b>Assessed Value</b> 350,500	<b>Assessment Type</b> Annual New	<b>Assessment Notice for</b> 2010

#### Before:

Lillian Lundgren, Presiding Officer  
Petra Hagemann, Board Member  
Howard Worrell, Board Member

**Board Officer:** Annet N. Adetunji

#### Persons Appearing: Complainant

John Trelford, Altus Group

#### Persons Appearing: Respondent

Chris Rumsey, Assessment and Taxation Branch  
Tanya Smith, Law Branch

## **BACKGROUND**

The subject 4,939 square feet (sq. ft.) vacant parcel of land is located at 9601 Jasper Avenue NW in the Boyle Street subdivision. It is a corner lot zoned CB-2 and assessed as an unpaved parking lot using a base rate of \$48.90/ sq. ft. The base rate is adjusted for lot size and locational factor which results in a rate of \$70.97/ sq. ft. for a total property assessment of \$350,500.

## **ISSUES**

- 1) What is the correct rate per square foot of the subject property?
- 2) Is the subject property equitably assessed with other properties in the area?

The only issues brought forward in the hearing before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not addressed any of the other issues initially raised by the Complainant on Schedule 1.

## **LEGISLATION**

***The Municipal Government Act, R.S.A. 2000, c. M-26;***

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**

This appeal is filed on the basis that the subject assessment was prepared using an incorrect rate per square foot, and also, that the subject property is inequitably assessed with other properties in the area.

### **1. What is the correct rate per square foot of the subject property?**

The Complainant argues that the subject assessment of \$71.03/ sq. ft. is above market value. In support of this argument, the Complainant submitted six sales comparables with an average time adjusted sale price of \$49.84/ sq. ft. The Complainant requested a reduction to \$246,000 or \$49.84/ sq. ft.

### **2. Is the subject property equitably assessed with other properties in the area?**

The Complainant submitted that the Respondent municipality has assessed the subject vacant property inequitably with other properties in the area. The subject is assessed at \$71.03/ sq. ft., whereas improved properties within close proximity are assessed from \$49.24/ sq. ft. to \$67.80/

sq. ft. The Complainant asserts that it is unfair that the subject vacant lot is assessed at a higher rate per square foot than properties improved with operating businesses. The six equity comparables are:

Address	Site Area	Zoning	Asst/sf	Notes
9208 Jasper Avenue NW	16,838	CNC	62.83	Corner location. Includes 5,650 sq. ft. store and gas pumps.
9539 Jasper Avenue NW	6,463	CMX	54.08	Corner location. Includes 2,263 sq. ft. liquor store.
9665 101A Avenue NW	6,490	DC1	67.80	Corner location on 97 St. Includes 4,093 sq. ft. store.
9441 Jasper Avenue NW	15,588	DC1	49.24	Corner location. Includes 4,098 sq. ft. restaurant space.
9530 Jasper Avenue NW	5,894	DC1	55.99	Includes 2,760 sq. ft. of auto service.
9531 Jasper Avenue NW	9,811	DC1	60.09	Includes 15,209 sq. ft. of 3 storey retail space.
<b>Average 58.33</b>				
<b>Subject Property</b>				
9601 Jasper Avenue NW	4,939	DC1	71.03	

The Complainant requests the Board to reduce the subject assessment to \$288,000 (\$58.34/ sq. ft.) to bring the subject assessment in line with the assessments of other properties in the area.

The Complainant stressed that the assessment comparables presented are improved properties with operating businesses; however, they are assessed at a much lower rate per square foot than the vacant land of the subject property. The Complainant indicated that this creates an inequity and referred the Board to the decision *Bramalea Ltd v. British Columbia (Assessor of Area No. 9 – Vancouver)*, (1991) 76 D.L.R. (4<sup>th</sup>) 53 (B.C.C.A.) where the Court ruled that the lower of fairness and equity or market value shall prevail.

## **POSITION OF THE RESPONDENT**

### **1. What is the correct rate per square foot of the subject property?**

The Respondent argued that the sales of vacant land in the area support the subject assessment of \$70.97/ sq. ft. In support of this argument, the Respondent presented four sales comparables which range from \$68.88/ sq. ft. to \$71.16/ sq. ft. for an average sale price of \$70.30/ sq. ft. The sales are located on 96 Street which is an inferior location to the subject location on Jasper Avenue, nevertheless, these sales support the \$70.97/ sq. ft. used to calculate the subject assessment of \$350,500.

### **2. Is the subject property equitably assessed with other properties in the area?**

The Respondent submitted five assessment comparables which are not corner locations. The subject is a corner lot and deemed to be in a superior location. The following assessment comparables support the subject assessment.

Roll Number	Address	Zoning	Lot Size	2010 Assmt	Assmt/ft
3638707	9616 Jasper Avenue	CB2	4408	\$304,000	\$68.97
3638806	9636 Jasper Avenue	CB2	7023	\$446,500	\$63.58
3638855	9640 Jasper Avenue	CB2	3592	\$256,500	\$71.41
3638905	9646 Jasper Avenue	CB2	4764	\$324,000	\$68.01
3639002	9633 101A Avenue	CB2	4897	\$331,500	\$67.69
<b>Average</b>					<b>\$67.93</b>
<b>Subject Property</b>					
3638509	9601 Jasper Avenue	CB2	4939	\$350,500	\$70.97

In response to the Complainant's issue respecting equity, the practice of the Respondent municipality is to first establish a threshold value per square foot for vacant land based on sales. Second, each of the improved properties are valued and if the indicated value for the land and improvements is below the threshold value, the threshold value is applied. The Respondent did not provide a reason for each of the Complainant's equity comparables being valued at a lower rate per square foot than the subject property.

The Respondent referenced fairness and equity case law *Bramalea Ltd v. British Columbia (Assessor of Area No. 9 – Vancouver)*, supra which recognized the right of a taxpayer to receive equitable treatment. The Respondent stated that a later decision, *Bentall Retail Services Inc v. Vancouver (Assessor) Area #09* [2006] B.C.J. 560 clarifies the *Bramalea* decision by stating, "Bramalea stands for the proposition that when equity is an issue, it is only if the range of values determined to be actual value lies entirely outside the range of values that is inequitable, that an adjustment is required."

In a 2000 decision of the Alberta Court of Queen's Bench in *Mountain View v. Alberta Municipal Government Board* A.J. No. 1042, the Court accepted the principles in *Bramalea*, supra but arrived at a different conclusion.

In *697604 Alberta Ltd v. Calgary* [2005] A.J. N0. 861, the Court of Queen's Bench more recently confirmed that the decision in *Mountain View*, supra, was a correct statement of law in Alberta.

The reasoning of the Court will only apply where there is a clear conflict between equity and market value. If the assessed value is within a range of values which would be considered equitable for that class, the Board does not have to choose between these competing objectives.

In conclusion, the Respondent requests confirmation.

## **FINDINGS**

- 1) The Board finds insufficient sales evidence to alter the assessment
- 2) The subject is inequitably assessed with neighboring properties.

## **DECISION**

The complaint is allowed and the 2010 property assessment is reduced to \$292,500.

## **REASONS FOR THE DECISION**

### **1. What is the correct rate per square foot of the subject property?**

The subject property is a 4,939 sq. ft. vacant lot located on the corner of 96 street and Jasper Avenue. It is zoned CB-2 and assessed at a rate of \$70.97/ sq. ft. The Board reviewed the sales comparables submitted by both parties and notes the following differences between the sales comparables and the subject property. The Complainant's sales comparables:

- **9513 102A Avenue** is an interior lot and not located on a major arterial roadway.
- **10261 96 Street** was a multiple sale including a corner and two interior lots and not located on a major arterial roadway.
- **10219 96 Street** is an interior lot and not located on a major arterial roadway.
- **9546 103 Avenue and 9320 103 Avenue** are both multi-family land sales. They are interior lots, zoned for residential development and not located on a major arterial roadway.
- **10245/49 96 Street** are interior lots that are encumbered by an encroachment agreements and not located on a major arterial roadway.

The Respondent's sales comparables:

- **9613/17 103 Avenue** are both interior lots, not located on Jasper Avenue. These two properties were sold as a multi family land sale to the same purchaser.
- **9624 102A Avenue** upon questioning was said to have been included in the above sale, however, no sales data sheet was included.
- **9517 102A Avenue** is an interior lot and not on Jasper Avenue.

Owing to the fact that there are no sales of vacant, corner lots on Jasper Avenue, the Board looked to three sales of interior vacant lots of similar size and zoning. The sales at 9513 102A Avenue NW (\$69.97/ sq. ft.), 10219 96 Street NW (\$58.94/ sq. ft.) and 9517 102A Avenue NW (\$70.01/ sq. ft.) average \$66.30/ sq. ft. The subject assessment of \$70.97/ sq. ft. bears a reasonable relationship to the average assessment per square foot of these interior lots, because the subject corner lot is deemed to be more valuable.

The Board finds insufficient sales evidence to alter the assessment.

### **2. Is the subject property equitably assessed with other properties in the area?**

Section 467(3) of the Municipal Government Act contemplates that an assessment may be at market value but not equitable. Based on the sales comparables of vacant land noted above, the Board finds the subject property to be valued correctly. However, based on the three most similar assessment comparables presented by the Complainant, the subject assessment is inequitable. It is unreasonable to have three properties within one block of the subject property which are improved and assessed for a lower value per square foot.

In this situation and for the above reasons, the subject property assessment is reduced to \$292,500 based on the three equity comparables located at 9539 Jasper Avenue, 9665 101A Avenue, and 9530 Jasper Avenue. The Board agrees with the Complainant's position that land improved with an operating business should not be assessed for less per square foot than vacant land, all things equal.

The Board reviewed the case law submitted by the Respondent, including *Bramalea v. British Columbia*, supra, *Mountain View County v. Alberta*, supra, and *697604 v. Calgary (City)* supra. Amongst other things, these cases reaffirm the well known principle that taxpayers have the right to be assessed at the lower of i) their property's market value or ii) a value that is equitable in relation to similar property within the municipality. It notes in particular the passage quoted from the leading case of *Jonas v. Gilbert* (1881) 5 SCR 356, by the BC Court of Appeal in *Bramalea*:

Unless the legislative authority otherwise ordains, everybody having property or doing business in the country is entitled to assume that taxation shall be fair and equal and that no one class of individual, or one species of property, shall be unequally or unduly assessed.

In this case, the Board finds that the subject property has been unfairly assessed in relation to neighbouring properties, and its decision to reduce the its assessment, therefore, is not inconsistent with the principles laid down by the courts.

Accordingly, the subject property assessment is reduced on the basis of equity.

### **DISSENTING DECISION AND REASONS**

None.

Dated this 23<sup>rd</sup> day of August, 2010 at the City of Edmonton, in the Province of Alberta.

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Presiding Officer

*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, R.S.A. 2000, c.M-26.*

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CC: Municipal Government Board  
Alldritt Land Corporation.