



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 164/10

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 4, 2010 respecting a complaint for:

Roll Number 10164346	Municipal Address 14702 137 Avenue NW	Legal Description Plan 0925647 Block 1 Lot 1
Assessed Value \$16,547,500	Assessment Type Annual New	Assessment Notice for: 2010

Before:

Hatem Naboulsi, Presiding Officer
Taras Luciw, Board Member
Anthony Slemko, Board Member

Board Officer:

J. Halicki

Persons Appearing: Complainant

John Trelford, Agent
Director, Realty Tax Consulting
Altus Group Ltd.

Persons Appearing: Respondent

Chris Rumsey, Assessor
Assessment and Taxation Branch
City of Edmonton

PROCEDURAL MATTERS

The Complainant and Respondent expressed no objection to the composition of the Board and the Board Members had no bias to this file.

PRELIMINARY MATTERS

The Complainant submitted a rebuttal document (exhibit C2) objecting to the admission of the Respondent's submissions, asserting that s.8(2)(b)(i) of *Matters Relating to Assessment Complaints Regulation* AR 310/2009 had not been satisfied. The Board allowed the Respondent to proceed with the admission of their evidence.

The Board reviewed the provisions of the aforementioned regulation and concluded that the packages had been exchanged properly. The Board ruled that the Respondent could present his evidence without providing any information that had not been provided in the disclosure package. The Complainant was permitted to object if the Respondent presented evidence outside of the disclosure.

BACKGROUND

The subject property, located in the Mistatim Industrial neighbourhood, consists of an undeveloped parcel of land with a surface area of 30.10 acres (1,311,250 square feet).

ISSUE(S)

Should the subject property be assessed as farmland?

Is the subject property fairly and equitably assessed as compared with similar properties in the area?

LEGISLATION

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.

Matters Relating to Assessment Complaints Regulation AR 310/2009

s. 8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (b) the respondent must, at least 14 days before the hearing date,
 - (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

Matters Relating to Assessment and Taxation Regulation 220/2004

s. 4(1) The valuation standard for a parcel of land is

- (a) market value, or
- (b) if the parcel is used for farming operations, agricultural use value.

(2) In preparing an assessment for a parcel of land based on agricultural use value, the assessor must follow the procedures set out in the Alberta Farm Land Assessment Minister's Guidelines.

(3) Despite subsection (1)(b), the valuation standard for the following property is market value:

- (a) a parcel of land containing less than one acre;
- (b) a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
- (c) an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;
- (d) an area of 3 acres that
 - (i) is located within a parcel of land, and
 - (ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
- (e) any area that
 - (i) is located within a parcel of land,
 - (ii) is used for commercial or industrial purposes, and
 - (iii) cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
- (f) an area of 3 acres or more that
 - (i) is located within a parcel of land,
 - (ii) is used for commercial or industrial purposes, and
 - (iii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.

(4) An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.

(5) The valuation standard for strata space, as defined in section 86 of the *Land Titles Act*, is market value.

POSITION OF THE COMPLAINANT

Using a land value direct sales comparison approach, the Complainant submitted for the Board's consideration three sales comparables dated from March 2007 to May 2008 (C1, pg. 8). These sales ranged in value from \$4.08 to \$4.28 per square foot with an average of \$4.20 per square foot. Additionally, the Complainant submitted one equity comparable (C1, pg. 9) with a per square foot assessment of \$2.58. Exhibit C1 contained several photographs of the subject property.

The Complainant also submitted that the subject property was used as farmland, in a sharecropping arrangement, and should, therefore, qualify for different treatment for assessment purposes (i.e. agricultural) as provided for under provincial law (*Matters Relating to Assessment and Taxation Regulation*, s.4). Three sales of properties of approximately three acres were provided (C1, pg. 10) with an average price of \$18.07 per square foot. These sales were presented to comply with the legislated requirement that a three acre set-aside must be calculated if the farmland provisions are applied. A reduction of \$7.12 per square foot was applied on the basis that the parcels were fully serviced at the time of purchase.

As noted previously, the Complainant submitted a rebuttal document (exhibit C2) on the preliminary matter.

Additionally, the Complainant submitted diagrams (exhibit C3/C4) of the subject property.

The Complainant requests a reduction in the subject property 2010 assessment, on the basis that it should be assessed as farmland, from \$16,547,500 to \$1,449,500 or, alternatively, using an equity approach a reduction to \$3,385,500 or using the direct sales comparison approach a reduction to \$5,511,000.

POSITION OF THE RESPONDENT

The Respondent stated that the 2010 assessment of the subject property had been fairly and equitably assessed using the mass appraisal model.

The Respondent submitted in exhibit R1 several photos of the subject property (pgs. 11-27), a table documenting one sales comparable from the SE quadrant of Edmonton (pg. 33) at \$18.06 per square foot, and an assessment comparison chart (pg. 34) for three other properties with assessed values ranging from \$10.16 to \$19.10 per square foot. These averaged at \$15.89 per square foot.

The Respondent's position was that the lot was partially serviced and that no substantial farming activity had taken place on the subject property in 2009.

A law and legislation brief was admitted as exhibit R2.

DECISION

The Board is not persuaded that the subject property is farmland. The Board reduces the 2010 property assessment from \$16,547,500 to \$13,322,500.

REASONS FOR THE DECISION

The Board considered the issue as to whether the subject property should be assessed as farmland and found that the subject property should not be assessed as farmland. The Complainant produced a lease between the owner and M-P Enterprises Ltd. (the lessee). The Complainant also produced photographs of the subject property which purported to illustrate that farming operations were taking place on the land. However, the Complainant acknowledged that the land was not farmed in 2009 and that no activities had taken place in 2010 due to the wet weather. The Complainant stated that the land was suitable for the production of hay and that this was the intended crop.

The Board agrees with the Respondent's position that farming operations had not taken place on the land. The Respondent's photographs illustrate that large tracts of the land were without vegetation or other evidence that the land was being farmed in the way this term is ordinarily used. The City pointed out that "farming operations" as per the applicable legislation connoted an active farming business.

The Board finds that the evidence before it does not support a finding that the parcel was being utilized in a farming operation at the relevant times. The existence of the lease does not in and of itself satisfy the statutory requirement in the absence of convincing supporting evidence of farming activities. The Complainant produced no evidence from the lessee or the owner detailing the actual operations. In the absence of such evidence, the Board can not accept that a bona fides farming operation was being conducted on these lands.

The Board was not persuaded by neither the Complainant's sales comparables (C1, pg. 8) nor the equity comparable (C1, pg. 9) as those properties were substantially larger than the subject property and, in one case, almost four times the size.

The Board was not persuaded by the Respondent's one sale comparable (R1, pg. 33) which was located in the SE quadrant of Edmonton as opposed to the subject property's location in the NW quadrant.

The Respondent described the subject property as being partially serviced. The Board acknowledges that the lot is not fully serviced (R1, pg. 35). Given the subject property's prime location, and given the subject property's access to services, the assessment corresponds with nearby properties and is, therefore, fair and equitable.

The Board placed less weight on the Respondent's other equity comparables given their location. However, the Board finds that the first equity comparable (14903 137 Avenue) presented by the Respondent in exhibit R1, page 34 was the best available evidence because of its size and location (across the road from the subject property). Although the Board acknowledges that this equity comparable is fully serviced and not located on a major intersection like the subject property, it has used its \$10.16 per square foot assessed value, applied it to the subject property, and calculated a reduced assessment of \$13,322,500.

DISSENTING DECISION AND REASONS

Not applicable.

Dated this second day of September, 2010, at the City of Edmonton, in the Province of Alberta.

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.

CC: Municipal Government Board
City of Edmonton, Assessment and Taxation Branch
Lauring GP Ltd.