



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON AB T5J 2R7
(780) 496-5026 FAX (780) 496-8199

NOTICE OF DECISION NO. 0098 181/10

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:

| | | |
|---------------------------------------|---|---|
| Roll Number 9538109 | Municipal Address 6312 50 Street NW | Legal Description SE 23-52-24-4 |
| Assessed Value \$40,962,500 | Assessment Type Annual - New | Assessment Notice for: 2010 |

Before:

Ted Sadlowski, Presiding Officer
Mary Sheldon, Board Member
Brian Carbol, Board Member

Board Officer:

Segun Kaffo

Persons Appearing: Complainant

Walid Melhem, Altus Group

Persons Appearing: Respondent

Blaire Rustulka, Assessment and Taxation

PRELIMINARY MATTERS

Upon questioning by the Presiding Officer, the parties present indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file.

The Complainant raised a preliminary issue alleging that the Respondent was in violation of Section 8 of the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009. According to the allegation, the Respondent's summary of the testimonial evidence was not in "sufficient detail to allow the Complainant to respond to or rebut the evidence at the hearing."

The Board did not concur with the allegation and considered that the summary of testimonial evidence provided by the Respondent was sufficient. As a result, the preliminary issue was denied.

The Complainant raised a further preliminary issue alleging that the Respondent failed to reply in a satisfactory manner to a request for information under s. 299 and s. 300 of the *Municipal Government Act*. According to this allegation, the Respondent failed to provide to the Complainant particulars of the method of applying to the subject property the cost approach to value. The Complainant indicated that he was prejudiced in preparing for the hearing by this lack of information. The Complainant requested that the Board not hear any of the Respondent's evidence in connection with the information that had been requested by the Complainant but not received.

The Board considered MRAC s. 9(4) which states that *A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.*

In deliberating upon this matter, the Board noted that the Assessment Complaints Agent Authorization form indicates that, *I understand that this authorization does not act as an authorization of agency for the purposes of s. 299 or 300 of the Municipal Government Act.*

The Board notes that the Complainant's request for information from the Respondent was made by the duly authorized agent. Thus, the Board concluded that the request was not properly made and this preliminary issue raised by the Complainant was denied.

BACKGROUND

The subject is described as a medium warehouse in the Roper Industrial subdivision in Edmonton. The size of the lot is 2,596,340 sq. ft. There are numerous buildings on site, some in the process of being removed. At present there are six buildings.

ISSUES

The Complainant attached a schedule to the complaint form listing numerous issues. However, most of these issues were abandoned. The issues remaining to be decided were as follows:

1. The subject property is assessed in contravention of s. 293 of the *Municipal Government Act* and Alberta Regulation 220/2004;
2. The use, quality and physical condition attributed by the municipality to the subject property are incorrect, inequitable and do not satisfy the requirement of section 289(2) of the *Municipal Government Act*;
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts;
4. The assessment of the subject property is in excess of its market value for assessment purposes;
5. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties;
6. The information requested from the municipality pursuant to section 299 or 300 of the MGA was not provided or was so expensive that the costs impeded access to information;
7. The classification of the subject property is neither fair, equitable, nor correct;

8. The influence adjustment factors applied to the assessment have been inequitably applied to the base rate;
9. The size, shape, topography of the subject property has not been adequately adjusted for in the assessment.

The issues can be further defined as follows:

1. The assessment on the subject property should be prepared using the cost approach;
2. Sales of similar land, and adding the improvement value, show a value lower than the current assessment;
3. The City indicated they did not use the cost approach to prepare the assessment while the partial records released show a cost evaluation;
4. Properties in Roper Industrial experienced a decrease in assessment;
5. Improvements were removed from the site from December 31, 2008 to December 31, 2009 which on a sales model would have resulted in a decrease in assessment;
6. Using the sales model for warehouses would have resulted in a significantly lower assessment than the current 2010 assessment.

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.*

s. 289(2) *Each assessment must reflect*

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*
- (b) the valuation and other standards set out in the regulations for that property.*

s. 293(1) *In preparing an assessment, the assessor must, in a fair and equitable manner,*

- (a) apply the valuation and other standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations.*

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

The 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.

POSITION OF THE COMPLAINANT

1. The Complainant agreed that if the subject is to be assessed using the cost approach, the value for the improvements on the site as of December 31, 2009 on the depreciated replacement cost is \$7,303,518 (C-1, page 10).
2. The Complainant argued that the value of the land portion of the subject was excessive. He provided a chart of sales of comparable land for the Board to consider (C-1, page 8). He indicated that the value to be applied to the land portion of the subject should be \$9.00 per sq. ft., given the average time adjusted sale price per square foot of the comparables and adjusting downwards for the much larger site size of the subject.
3. The Complainant submitted that, using the above calculation of \$9.00 per square foot applied to the size of the site at 2,596,340 per sq. ft. and adding the cost of the improvements as set out in paragraph 1, the Board should reduce the assessment of the subject to \$30,670,500.
4. The Complainant presented data from 2009 which showed that the subject had been assessed previously using the direct sales approach which had resulted in a value of \$30,836,000 (C-1, page 11).
5. The Complainant also provided evidence that properties in the Roper Industrial area had generally decreased in assessment for the 2010 assessment year. He argued that the median decrease in assessment was 15% and that this same downward adjustment should be applied to the subject property (C-1, page 15).

POSITION OF THE RESPONDENT

1. The Respondent indicated that the subject property was in a prime location with excellent frontage and access. The developer is in the process of removing obsolete buildings and replacing them with new buildings. The subject is accordingly unique and is frequently inspected and assessed for 2010 by the cost approach.
2. The Respondent acknowledged that the improvements on the land were valued at \$7,303,518 pursuant to the cost approach.
3. With respect to the land value portion of the subject, the Respondent provided a chart of sales of vacant land (R-1, page 13). These sales showed a range in size from 24.98 acres to 62.82 acres and showed an average price per acre of \$451,636, while the 2010 assessment for the subject was \$687,247 per acre.
4. The Respondent submitted to the Board that there are few sales of prime land such as the subject. The sales he referenced as land sales comparables are from various locations in the City and none are on major arterial roads as is the subject. He also cautioned that the

land equity comparables he provided on R-1, page 12 which show an average value per acre of \$465,276 are all of interior lots and none are on major roadways.

5. The Respondent referenced the 2009 Municipal Government Board decision for the subject property which valued the land portion of the subject at \$465,335 per acre. He argued that his position was that that decision only took into account interior parcels of land when making comparisons and that an upward adjustment to that amount of 30% would be appropriate to account for the subject's superior and unique location, access and features.
6. In conclusion, he invited the Board to consider an assessment based on the agreed upon value of the improvements at \$7,303,518 and adding to that the value of \$465,335 per acre as referenced in the previous year's MGB decision, plus an upward adjustment of 30% to that land value to account for the subject's prime location.

DECISION

The Board's decision is that the 2010 assessment of the subject property should be reduced to \$37,680,000.

REASONS FOR THE DECISION

1. The Board accepts that the subject is properly assessed using the cost approach to value given the uniqueness of the property and the construction and replacement work occurring on the site.
2. The Board notes the Complainant's submission (C-1, page 15) that warehouse properties of more than 50,000 sq. ft. in the Roper Industrial area experienced a median drop in assessment of 15% for 2010 and only two other industrial properties in the same industrial subdivision which experienced an increase in assessment
3. The Board notes as well the Respondent's submission that the Board ought to apply the MGB's 2009 value per acre of the subject property of \$465,335 and adjust upwards by 30% to account for the subject's prime and unique location and features.
4. The Board is of the opinion that the Complainant's land sales comparables are of more assistance than the Respondent's land sales comparables in establishing value for the subject land. The Respondent provided land sales from many different locations in the City in an effort to provide comparables of properties similar in size to the subject. However, the Board notes that only one of those comparables is similar in size to the subject and, as well, the differences in location make comparison with the subject problematic. The Board accepts the Complainant's submission that an appropriate value per square foot for the land portion of the subject would be \$9.00, based on an average price per square foot of \$9.86 of the Complainant's land sales comparables and adjusting downward to \$9.00 per square foot to account for the larger size of the subject. However, the Board must still consider the unique features and location of the subject.
5. The Board concludes that a figure of \$9.00 per square foot ought to be applied to the land of the subject and that the resulting figure for the land portion ought to be increased by 30% to accommodate the Respondent's submission regarding the prime location and features of the subject. When that figure is calculated and the undisputed value of the improvements is added, the resulting value for the subject at \$37,680,000 is obtained which the Board concludes is fair and equitable.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 9th 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
CV Investment Holdings Inc.