



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION NO. 0098 183/10

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 July 26, 2010, respecting a complaint for:

Roll Number 7097934	Municipal Address 10631 82 AVENUE NW	Legal Description Plan: 5809KS Block: 64 Lot: 7
Assessed Value \$1,124,000	Assessment Type Annual New	Assessment Notice For: 2010

Before:

Board Officer: Kyle MacLeod

Hatem Naboulsi, Presiding Officer
Tom Eapen, Board Member
John Braim, Board Member

Persons Appearing: Complainant
John Trelford, Director, Altus Group

Persons Appearing: Respondent
Chris Rumsey, Assessor, City of Edmonton
Tanya Smith, Barrister & Solicitor, City of Edmonton

PRELIMINARY MATTERS

1. The Complainant objected to the Respondent's evidence package (R1) noting no summary was provided, and was therefore too open-ended to adequately prepare a rebuttal.

The Board reviewed the request regarding s.8(2)(b)(i) of *Matters Relating to Assessment Complaints Regulation* (MRAC) and ruled that that Respondent can submit their evidence but neither party can enter any information not provided in the disclosure package. The Complainant may object if the Respondent presents evidence outside of their disclosure. No further objections were raised on this matter.

2. Upon commencement of the hearing the Respondent objected to the admissibility of the Complainant's rebuttal document (C-2), which contained the 2010 assessment of the sales comparables presented by the Respondent, as well as the assessment per square foot and the Assessment to Sales Ratio (ASR). The Respondent objected in particular to the submission of the ASR as it had not been an issue on the original complaint form. The Board ruled that the Complainant's rebuttal document was admissible as it was exchanged properly, in a timely fashion, and related to an issue that was stated on the complaint form.

BACKGROUND

The subject property is located in a prime location at 10631 82nd Avenue. It comprises a paved used car lot extending to 8,672 sq. ft. The subject property is assessed at \$129.62/ sq. ft. for a total of \$1,124,000.

ISSUES

Is the subject property assessed correctly compared to sales and assessments of other similar properties in the same area?

LEGISLATION

Matters Relating to Assessment Complaints Regulation, Alberta Regulation 310/2009

- s.8(2)(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
- s.289 (2) Each assessment must reflect
 - (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.

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.

Bramalea Ltd. v. British Columbia (1990), 76 D.L.R. (4d) 53. [*Bramalea*]

POSITION OF THE COMPLAINANT

The Complainant submitted five sales comparables (C-1, pg. 8) dated from March 2006 to October 2009 ranging from \$48.34/ sq. ft. to \$102.88/ sq. ft. with an average of \$65.79/ sq. ft.

The Complainant also submitted eight equity comparisons (C-1 pg. 10) ranging from \$54.33/ sq. ft. to \$93.28/ sq. ft. with an average of \$71.05/ sq. ft.

The Complainant requests a reduction of the subject property's 2010 assessment from \$1,124,000 to \$570,000 based on direct sales comparables or \$616,000 based on equity comparables. The value requested, based on the direct sales comparables, averages \$65.79/ sq. ft., and is \$570,000.

POSITION OF THE RESPONDENT

The Respondent submitted four sales comparables (R-1, pg. 15) dated from December 2006 to April 2010 with time adjusted sale prices ranging from \$76.70/ sq. ft. to \$114.53/ sq. ft. with an average of \$98.36/ sq. ft.

The Respondent also submitted six equity comparables (R-1, pg. 16) ranging from \$120.43/ sq. ft. to \$168.67/ sq. ft. with an average of \$145.49/ sq. ft.

DECISION

The decision of the Board is to reduce the 2010 assessment of the subject property from \$1,124,000 to \$892,000.

REASONS FOR THE DECISION

The Board found the equity comparables submitted by the Complainant were not in close proximity to the subject property and ranged from \$54.33/ sq. ft. to \$93.28/ sq. ft. with an average of \$71.05/ sq. ft.

The Board also found the six equity comparables presented by the Respondent to be much closer in proximity to the subject property and ranged in value from \$120.43 / sq. ft. to \$168.67 /sq. ft. with an average of \$145.49/ sq. ft.

The Board was persuaded by the sale located at 9913 82nd Avenue which was used by both the Complainant and Respondent with a time adjusted value of \$102.87/ sq. ft. The Board also took into consideration, as a trend of value, the sale at 10813 82nd Avenue which was sold in April 2010 for \$114.53/ sq. ft. However, the Board was concerned that this property (R-1, pg. 16) had an assessment of \$168.67/ sq. ft. sold in April 2010 for \$114.53/ sq. ft., which brought into question the validity of the Respondent's comparables. Additionally, the disparity between the Respondent's equity comparable average (\$145.49/ sq. ft.) and sales comparable average (\$98.36 sq. ft.) suggests the sales comparables provided are not an accurate representation of market value.

Two of the Complainant's and one of the Respondent's sales comparables were post facto (after the July 1, 2009 valuation date). The Board accepts that, in general, a post facto sale should be used only to establish trends in the marketplace. However, it could also be used to assist in establishing the value, if evidence is provided to the Board that the parties to the sale agreed to the purchase price prior to the valuation date.

The Board was satisfied that the assessor complied fully with the requirements of the s.293 of the Municipal Government Act.

The legal decision *Bramalea* articulates that where the assessment standard is market value, a taxpayer is entitled to either market value or a value that is fair and equitable in relation to similar properties, whichever is lower. It is a long established principle of assessment that a taxpayer has the right to an assessment not in excess of actual value, and to an assessment that is comparable with similar properties in the municipality.

The Board can only deal with the complaint before it. Accordingly, in order to preserve the taxpayer's right to equity and accuracy with similar properties, the subject assessment is lowered to the same rate as the comparable used by both parties.

Dated this 2nd 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: Wheaton Investments Ltd.
Municipal Government Board