



## ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL  
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### NOTICE OF DECISION NO. 0098 192/10

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:

<b>Roll Number</b> 7098593	<b>Municipal Address</b> 10538 82 AVENUE NW	<b>Legal Description</b> Plan: I Block: 66 Lot: 8,9,10
<b>Assessed Value</b> \$888,000	<b>Assessment Type</b> Annual New	<b>Assessment Notice For:</b> 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

**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. 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.

3. The Respondent objected under MRAC s. 9(1) that the Complainant did not identify on the complaint form any 'double taxation' issue and therefore the Board cannot hear arguments from the Complainant regarding that issue.

The Board reviewed the objections raised by the Respondent and found the Complainant's line of reasoning is not barred by legislation. The argument put forward by the Complainant is broadly encompassed within the issue the Complainant did identify on the complaint form (C-1, pg. 3, issue 2). The Board also finds the City of Edmonton's identification of the land on the assessment notice provided by the Complainant (C-1, pg. 6) with respect to the subject property's roll number includes lots 8, 9 and 10. The Board rules the Complainant may continue to present evidence based on the arguments presented in the disclosure package.

## **BACKGROUND**

The subject property is located in a prime location at 10538 82<sup>nd</sup> Avenue. It comprises a car wash lot, described on the assessment notice as undeveloped land, extending to 6,525 sq. ft and is used for parking on the adjoining 'Bubbles' car wash. The subject property is assessed at \$136.09/ sq. ft. for a total of \$888,000. The 2010 assessment was derived using the direct sales comparison approach.

## **ISSUES**

1. Is the subject property fairly and accurately assessed as compared with similar properties in the area?
2. Is the value of the subject property captured by the assessment of the adjoining 'Bubbles' car wash property?

## **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. 9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

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

- 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.
- 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 comparables (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 submitted that based on current legal decisions (*Bramalea*) the subject property is entitled to the lower of the direct sales approach or the assessment equity. The value requested, based on the direct sales comparables, averages to \$450,500, or, based on equity comparables, \$463,500. The Complainant submits \$450,500 is the requested value.

The Complainant argues that the canopy extending from the adjacent lot is considered a building improvement. If an improvement on a parcel crosses more than one lot, it should be merged as one parcel.

The Complainant submitted that the rental rate for 'Bubbles' captures the value of the subject property therefore the assessment of the subject property should be reduced to a nominal value of \$500 and the subject property roll number should not exist.

### **POSITION OF THE RESPONDENT**

The Respondent submitted three sales comparables (R-1, pg. 15) dated from March 2007 to April 2010 with time adjusted sales prices ranging from \$99.32/ sq. ft. to \$114.53/ sq. ft. with an average of \$105.57/ 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 \$144.41/ sq. ft.

The Respondent argued that the Complainant did not provide any real property reports nor any evidence to the board to suggest these two lots are tied together as one parcel.

The Respondent also denied that a canopy could fuse two separate properties together and argued the Complainant did not meet the onus of proving that the canopy was permanently fixed to the subject parcel.

The only issue before the Board is in regards to lot 8 and half of lot 9.

### **DECISION**

The decision of the Board is to reduce the 2010 assessment from \$888,000 to \$671,000.

## **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 submitted by the Respondent were 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 \$144.41/ sq. ft.

The Board was persuaded by the sale located at 9913 82<sup>nd</sup> Avenue which was used by both the Complainant and Respondent and was sold 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 82<sup>nd</sup> Avenue which was sold in April 2010 for \$114.53/ sq. ft. However the Board was concerned that this property, (R-1, pg. 16) with an assessment of \$168.67/ sq. ft. sold in April 2010 for \$114.53/ sq. ft. brought into question the validity of the Respondent's comparables. Additionally, the disparity between the Respondent's equity comparable average (\$144.41/ sq. ft.) and sales comparable average (\$105.57/ 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 market value, if there is evidence provided to the Board that the parties to the sale agreed to the purchase price prior to the valuation date.

The Board disagreed with the Complainant that the rental rate applied to the 'Bubbles' property captured the value of the subject property. The Complainant brought no evidence supporting that argument and in fact did not even present evidence that both properties were owned by the same taxpayer.

s.289 of the Municipal Government Act requires the assessor to prepare a market value assessment for each property, and there is nothing to indicate the assessor acted improperly in preparing an independent assessment for the subject.

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 comparables used by both parties.

Dated this 2nd day of September 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: 921079 Alberta Ltd.  
Municipal Government Board