



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION NO. 0098 193/10

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 27, 2010 respecting a complaint for:

Roll Number 10041217	Municipal Address 9650 ELLERSLIE ROAD SW	Legal Description Plan: 0525096 Block: 1 Lot: 4
Assessed Value \$4,474,500	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

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.

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 comprises an inner parcel of land situated on the north side of Ellerslie Road between Parsons Road and Gateway Boulevard. It consists of approximately 188,165 sq. ft. of vacant industrial land adjoining the east side of the Canadian Pacific Railway right of way. The subject property is assessed at \$4,474,500 which equates to \$23.78/ sq. ft. The 2010 assessment was derived using the direct sales comparison approach.

ISSUES

Is the subject property fairly and equitably assessed compared to similar property in the 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. 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 presented seven sales comparables (C-1, pg. 8) dated from May 2007 to October 2008 ranging from \$13.02/ sq. ft. to \$23.04/ sq. ft. with an average of \$18.16/ sq. ft.

The Complainant also submitted twelve equity comparables (C-1, pg. 10) ranging from \$14.00/ sq. ft. to \$21.50/ sq. ft. with an average of \$17.41/ sq. ft.

The Complainant argued that based on current legal decisions (*Bramalea*) the subject property is entitled to the lower of the direct sales approach or the assessment equity. Based on the direct sales comparison approach the Complainant is requesting \$3,417,000 and based on the equity comparison approach the Complainant is requesting \$3,275,500. Final request is \$3,275,500.

POSITION OF THE RESPONDENT

The Respondent submitted twelve sales comparables (R-1, pg. 15) dated from November 2006 to April 2009 ranging from \$17.11/ sq. ft. to \$37.57/ sq. ft. with an average of \$22.15/ sq. ft.

The Respondent also submitted five equity comparables (R-1, pg. 16) ranging from \$18.19/ sq. ft. to \$23.22/ sq. ft. with an average of \$20.75/ sq. ft.

DECISION

The decision of the Board is to reduce the 2010 assessment from \$4,474,500 to \$3,464,000.

REASONS FOR THE DECISION

The Board was persuaded by the Respondent's three sales located at 9204, 9404, and 9504 respectively, which, like the subject, all fronted Ellerslie Road, and ranged in value from \$17.11/ sq. ft. to \$19.93/ sq. ft. with an average of \$18.41/ sq. ft. , the value utilized by the Board to derive the revised assessment.

The Board noted the sale at 9504 Ellerslie Road which was utilized by both the Complainant and the Respondent. Furthermore, both the Complainant and the Respondent utilized the sale of a property at 904 Parsons Road which had an average time adjusted sales price of \$23.04/ sq. ft. This sale is a corner lot at the southeast corner of Ellerslie Road and Parsons Road, a superior location.

The Board found the Respondent's sale comparable at 10004 Ellerslie Road that sold close to the assessment date at \$37.57/ sq. ft. was substantially higher than the rest of the sales comparables provided and was used as an equity comparable by the Respondent at \$22.91/ sq. ft. Additionally, this property has excellent exposure to Gateway Boulevard, which brings into question the validity of the Respondent's comparable sale.

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.

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: Sobeyes Capital Incorporated
Municipal Government Board