

NOTICE OF DECISION NO. 0098 193/12

Altus Group
780-10180 101 ST NW
EDMONTON, AB T5J 3S4

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 29, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
4031589	10310 31 AVENUE NW	Plan: 8821752 Block: 36 Lot: 3C	\$1,398,500	Annual New	2012

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, RSA 2000, c M-26.

cc: TDL GROUP LTD.

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, ECARB 2012-000606

Assessment Roll Number: 4031589

Municipal Address: 10310 31 AVENUE NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Hatem Naboulsi, Presiding Officer
Taras Luciw, Board Member
Tom Eapen, Board Member

Preliminary Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board members indicated no bias in the matter before them. At the request of the Respondent, all witnesses were sworn in.

Background

[2] The subject property is classified as a power centre located at 10310-31 Avenue in the Calgary Trail South neighbourhood of the City of Edmonton. It is located on a lot size of 31,865 square feet. The building was constructed in 1993 and houses a fast food restaurant with a site coverage of 9%.

Issue(s)

[3] The Complainant listed nine issues, however during the hearing the Board was presented with evidence and heard argument on the following issues:

- a. Is the subject property assessed in excess of its market value when compared to sales of similar properties?

Legislation

[4] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

s 1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

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.

Position of the Complainant

[5] The Complainant provided written evidence (Exhibit C-1) detailing seven land sales comparables. The comparable properties were all located in the south quadrant as is the subject and their sale dates were from February, 2007 to December, 2009. The site area ranged from 43,537 to 619,626 sq ft while the subject is 31,865 sq ft. The time adjusted sale prices ranged from \$13.70 to \$28.38 sq ft. The subject is assessed at \$43.89 sq ft.

[6] The Complainant described the first three sales as a half interest in a larger sale of numerous properties that sold for \$39,242,500.

[7] The fourth sales comparable, at 1212 Calgary Trail SW, was removed as a comparable due to the sale taking place through a litigation process as well as there being additional consideration paid, the details of which were unknown. Additionally, the purchaser was the City of Edmonton.

[8] The Complainant also provided a copy of a previous Board Order (No. 0098 738/11) as support for the request for a reduction.

[9] In Rebuttal, the Complainant challenged the Respondent’s seven land sales comparables (Exhibit C-2, page 3). Sale one was located north of Whyte Avenue, sales two, three, six and seven were described as being small, residential lots and, sale five was a substantially larger property that was part of a multiple property sale. Sale number four was struck by the Respondent during rebuttal as the City of Edmonton was identified as the purchaser. The Complainant described the sales as lacking comparability with the subject.

[10] In conclusion, a request for a reduction in the assessment to \$645,500 was made by the Complainant.

Position of the Respondent

[11] The Respondent submitted an Assessment Brief, entered as Exhibit R-1. The property was shown to be assessed with a land value of \$1,398,416 and additional building value of \$500 for a total of \$1,398,916, rounded to \$1,398,500.

[12] The Respondent provided seven vacant land sales comparables to support the subject property's assessment. The sales took place from December, 2006 to June, 2011 and sold for a time adjusted price ranging from \$41.59 to \$78.83 per sq ft, averaging \$52.13 with a median of \$46.22. The sales support the subject assessment of \$43.89.

[13] During the Complainant's rebuttal, the Respondent's sale number four was struck from the sales comparables as the purchaser was the City of Edmonton. The average and median sales prices noted above were amended to \$53.44 and \$46.62 per sq ft respectively and still support the subject assessment.

[14] The Respondent referenced the Standard on Verification and Adjustment of Sales from the International Association of Assessing Officers, (Exhibit R-1, pages 6 -9) and addressed article 5.3, Sales Generally Considered Invalid; article 5.3.1, Sales Involving Government Agencies; article 5.4.2, Partial Interest and, article 5.6, Multiple-Parcel Sales. The Respondent challenged the Complainant's sales comparables noting that sales one, two and three were partial interest sales while sale number four was a government agency sale (removed during the hearing). Sales five, six and seven, contained numerous restrictive covenants which were not disclosed.

[15] The Respondent objected to the Complainant's rebuttal evidence as it contained material not previously disclosed, according to the Respondent. The Respondent referred to Matters Relating to Assessment Complaints Regulation (MRAC), sections 4(c) and 8(c), wherein timing of disclosure of rebuttal evidence is described. The Board reviewed the rebuttal material and only allowed previously exchanged rebuttal material.

Decision

[16] The decision of the Board is to confirm the 2012 assessment of \$1,398,500.

Reasons for the Decision

[17] The Board considered all the evidence submitted by the parties and placed little weight on the Complainant's sales comparables. The Board found the comparables lacked similarities in size, ranging from 43,537 to 619,626 sq ft, with the average site being 152,444 square feet which is five times the size of the subject, thereby not being reasonable comparables relative to size.

[18] The first three sales comparables were part of a larger sale that represented a one half interest in the properties which, according to article 5.4.2 of the Verification and Adjustment of Sales from the International Association of Assessing Officers, should be excluded as a valid transaction. Sales five, six and seven were all in different locations along Ellerslie Road, an area that is inferior to the subject.

[19] The Board heard the Complainant describe the property at 1850 – 102 Street, another Tim Horton's outlet, as the best comparable because of its characteristics and physical condition. The Board finds that the assessment of that property is \$484.97 per sq ft while the subject is assessed at \$466.17 per sq ft. This comparable supports the assessment.

[20] The Board noted that the Respondent's sales comparables also lacked similarities with the subject property. The sizes of five properties were substantially smaller ranging from 4,337 to 11,747 sq ft with four of them being residential properties and one being a parking lot, all in different locations than the subject. The last sale is a property of 145,491 sq ft, substantially larger than the subject's 31,864 sq ft. This sale is also part of a multiple property sale.

[21] The onus lies with the Complainant to show the assessment is incorrect. It is the Board's decision that there is not sufficient or compelling evidence for the establishment of a conclusion that the assessment is incorrect and the onus has not been met. The assessment is therefore fair and equitable.

Dissenting Opinion

[22] There was no dissenting opinion.

Heard commencing August 29, 2012.

Dated this 31st day of August, 2012, at the City of Edmonton, Alberta.

Hatem Naboulsi, Presiding Officer

Appearances:

John Trelford, Altus Group
for the Complainant

Cam Ashmore, Legal Counsel, City of Edmonton
Frank Wong, Assessor, City of Edmonton
for the Respondent