

NOTICE OF DECISION NO. 0098 200/12

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 28, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
1216589	11010 - 101 STREET NW	Plan: 8222283 Block: 1 Lot: 319C	\$901,500	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: HEALTHCARE PROPERTIES HOLDINGS LTD

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, ECARB 2012-001068

Assessment Roll Number: 1216589

Municipal Address: 11010 101 STREET NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

James Fleming, Presiding Officer

Darryl Menzak, Board Member

Judy Shewchuk, Board Member

Preliminary Matters

[1] The parties did not object to the composition of the panel nor were any issues of bias identified.

Background

[2] The subject property is a 15,002 square foot (sq. ft.) parcel of undeveloped land which is used for parking, principally for the Hys Centre multi use Residential/Office complex located immediately south of the subject. The subject is represented to have about 50 parking stalls and is zoned CB2 – General Business District. The property has no improvements and is valued on the Direct Sales Comparison (DSC) Approach.

Issue(s)

[3] The Complaint form contained seven issues. At the hearing the Complainant identified they would be pursuing two matters:

[4] Should the property be assessed as an integral part of the adjacent building because it constitutes part of the required parking for the building, and if so, should the subject receive a nominal value (\$500.00)?

[5] If the answer to the above question is no, then what is the best evidence of value for the subject property?

Legislation

[6] 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

[7] The Complainant indicated that this property was being taxed twice. Because it was required parking for Hys Centre, its value was captured as part of the assessment of the Centre to the extent that Hys Centre would not be able to obtain the same rental rates if it did not have the subject lands for parking. Because of this, the property should not be valued separately using the cost approach, but should receive a nominal value of \$500.00. The Complainant did not supply evidence showing that the subject is contractually bound to Hys Centre, although they did represent that there was a caveat on the subject property which they thought referenced that the subject was required parking for Hys Centre.

[8] They also reviewed the Edmonton Zoning By-Law 12800 to demonstrate that more parking was required than the amount of parking contained in the Centre as evidenced by the Income Assessment Detail from the City. By their calculations, the Hys Centre required 564 parking stalls (Ex. C1, pg. 50), and the City data showed only 299 stalls (Ex. R1, pg. 45). They offered this as proof that the subject site was required for parking.

[9] In the alternative, they stated that the City’s valuation was wrong, with an assessed rate of \$60.09 per sq. ft., and they included 15 land sales from the Boyle and Macauley areas (the subject neighbourhood) which demonstrated a median sales price of \$54.43 per sq. ft. and an average calculated to be \$58.19 per sq. ft. The time adjusted sales price (TASP) ranged from \$37.18 per sq. ft. to \$98.30 per sq. ft., and the sizes ranged from 4,950 sq. ft. to 46,311 sq. ft.

[10] They requested a rate of \$50.00 per sq. ft. be applied to the subject to recognize economies of scale, pointing out the median size of parcel were much smaller (8,052 sq. ft. compared with 15,002 sq. ft.).

[11] Accordingly, the Complainant requested the assessment be reduced to either a nominal value of **\$500.00** or a DSC value of **\$750,000**.

Position of the Respondent

[12] The Respondent provided five sales comparables and four equity comparables. The sales comparables ranged in size between 2,405 sq. ft. and 19,586 sq. ft. and had TASP's of \$58.29 per sq. ft. to \$80.06 per sq. ft. This is compared to the subject which was 15,002 sq. ft. with an assessed value of \$60.09 per sq. ft. The equity comparables ranged from 2,603 sq. ft. to 6,262 sq. ft. in size with assessed values ranging from \$64.90 per sq. ft. to \$70.10 per sq. ft.

[13] The Respondent indicated that both of these sets of comparables supported the assessment with averages of \$62.36 per sq. ft. for the sales comparables and \$66.87 per sq. ft. for the equity comparables.

[14] As additional support, the Respondent provided land transfer documents showing the subject and Hys Centre had sold together in January 2011 for \$53.0 million. They also indicated that Hys Centre was assessed at \$40.0 million, which left significant value allocation for the subject.

[15] The Respondent also provided transfer documentation for the adjacent lands north of the subject. Although the size of the land wasn't noted, the Respondent represented that each of the two lots was 7,500 sq. ft., and with a price of \$1,825,000, this constituted a sale price of over \$120.00 per sq. ft. These lands had sold in November 2011, which the Respondent agreed was post facto to the valuation date of July 1st, 2011. They indicated that this sale could be used to demonstrate a trend, and at a price of over \$120.00 per sq. ft., it certainly supported the value of the subject.

[16] In so far as the request for a nominal value, the Respondent indicated the Complainant had provided no evidence to show that the subject was required parking for the Hys Centre and the Respondent had not determined that the subject was required for parking. Thus, the subject should be valued as a separate property.

[17] The Respondent requested confirmation of the value of **\$901,500**.

Complainant's Rebuttal

[18] The Complainant argued that the Respondent had failed to properly consider the impact of economies of scale on the assessed value. To support this contention, the Complainant provided two charts (Ex. C2, pg. 7) that segregated both parties' comparables according to size. One chart with 13 entries showed sites less than 10,000 sq. ft. while the other chart with five entries showed sites greater than 15,000 sq. ft. The sites less than 10,000 sq. ft. had an average and median of \$62.05 per sq. ft. and \$59.54 per sq. ft. respectively. The sites over 15,000 sq. ft. (the size of the subject is 15,002 sq. ft.) had an average of \$52.74 per sq. ft. and a median of \$49.06 per sq. ft.

[19] The Complainant highlighted that the analysis above, based on economies of scale, provided strong support for their request for a value of \$50.00 per sq. ft. if the nominal value argument did not succeed.

Decision

[20] The Complaint is denied and the assessment is confirmed at **\$901,500**.

Reasons for the Decision

[21] The CARB considered all of the evidence and argument. First, with respect to the request for a nominal value because the subject is required parking for the adjacent building, the CARB notes that no evidence was provided by the Complainant that the subject was contractually bound to Hys Centre. There was mention of a caveat on the subject, but no details were provided. The Complainants did make an argument the site was required for Hys Centre parking based on parking requirements in the current parking bylaw (Ex. C1, pgs. 47 – 50). The CARB was not persuaded by that argument, because the bylaw was the current bylaw, and there was no evidence that the parking requirements were the same now as when the property was first approved. As well, the Hys Centre may have been approved, for a variety of reasons, without the requisite parking.

[22] Without some proof that the subject is required for parking for the Hys Centre, the CARB is unable to consider a nominal value for the site. The CARB notes that if such proof does exist, it should be possible to provide this to the City and obtain, in the future, whatever benefits may accrue from this situation. The CARB also notes that the Hys Centre was constructed in the 1970's, and it is hard to believe that this issue is only arising some 40 years after the original permits for the project were issued?

[23] Turning to the matter of the DSC value, the CARB reviewed three areas raised by the parties. Firstly, the CARB reviewed the charts in the Complainant's Rebuttal, which attempted to demonstrate the economies of scale. Next, the CARB took note of the "post facto" sale of the vacant land immediately to the north of the subject in November 2011 at a rate of just over \$120.00 per sq. ft. Finally, the CARB took note of the sale of the Hys Centre and the subject property for \$53.0 million in January of 2011.

[24] While the CARB initially concluded that the economies of scale argument had some merit, a closer look at the suggested comparables over 15,000 sq. ft. caused the CARB to question the comparability of the properties, particularly when compared to the post facto sale data from the similar adjacent land. The CARB concluded that, at best, the first two comparables located on 101st St. were the most comparable, and they also noted that both parties had presented the 10026 105A Ave. as a common comparable at a TASP of \$70.04. per sq. ft. The CARB concluded as well, that the location of the final three comparables was further away and in different markets, and so put less weight on these sales (Ex. C2, pg 7).

[25] The CARB understands the concept of post facto as it relates to a sale closed after the valuation date of July 1st 2011. The CARB notes however, that the sale was concluded "during" the assessment year, and numerous tribunal decisions have established that sales after the valuation date but still during the assessment year may be used to demonstrate trends.

[26] Accordingly, the CARB concludes that the "best" evidence of value is the post facto sale of the two adjacent lots to the north. The use of the land is similar, and at a sale price of over \$120.00 per sq. ft., significant time adjustments to reflect the valuation date could be made either up and/or down if required, and the resulting value would still support the assessed value of the subject. The CARB is aware that the exact size of the post facto lots was not provided, but from

the parties comments, and a review of site maps, the CARB is reasonably convinced that the post facto sale subject lots are roughly 7,500 sq. ft. each.

[27] The CARB confirms the assessment as noted above.

[28] The CARB also considered the evidence of the sale of the subject for \$53.0 million and its implication on value. The CARB recognizes that with Hys Centre assessment for 2012 at around \$40.0 million, there is a legitimate question that the properties are under assessed. The CARB received no concrete evidence from either party that would allow it to make any definite decisions on how this valuation would affect the subject property. In the simple analysis, if the assessment of the Hys Centre is correct, then the subject lands are worth \$13.0 million (i.e. \$53.0 million - \$40.0 million), and this is clearly an absurdity. Accordingly, the CARB accepted this as information but without further evidence or interpretation, the CARB was unable to use this information to establish a value for the subject.

Dissenting Opinion

[29] There is no dissenting opinion.

Heard commencing August 28, 2012.

Dated this 14th day of September, 2012, at the City of Edmonton, Alberta.

James Fleming, Presiding Officer

Appearances:

Chris Buchanan

Walid Melhem

for the Complainant

Blair Rustulka

Keivan Navidikasmaei

for the Respondent

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CARB	Other Property Types	Vacant Land	Cost/Sales Approach	Land Value