



## ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL  
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EDMONTON AB T5J 2R7  
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### NOTICE OF DECISION NO. 0098 325/10

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 hearings held on October 25, 2010 respecting a complaint for:

<b>Roll Number</b> 9956617	<b>Municipal Address</b> 4485 Gateway Blvd. NW	<b>Legal Description</b> Plan: 9822688 Lot: B
<b>Assessed Value</b> \$28,043,500	<b>Assessment Type</b> Annual New	<b>Assessment Notice for:</b> 2010

#### Before:

Lynn Patrick, Presiding Officer  
Francis Ng, Board Member  
Brian Carbol, Board Member

#### Board Officer:

Karin Lauderdale

#### Persons Appearing: Complainant

Walid Melhem, Altus Group Ltd.

#### Persons Appearing: Respondent

Chris Hodgson, Assessment and Taxation Branch  
Tanya Smith, Law Branch

### PRELIMINARY MATTERS

The parties indicated no objection to the composition of the Board and the Board Members expressed no bias with respect to this file.

The Respondent raised a preliminary matter respecting section 9(3) of the *Matters Relating To Assessment Complaints Regulation* (MRAC), Alta. Reg. 310/2009. The Respondent stated that 2008 information was not received.

### ISSUES

Is the Board bound by the provisions of s.9(3) MRAC which states that when information has not been provided in response to requests by the Respondent under s. 294 and s. 295 of the MGA, the Board must not hear that information?

## **POSITION OF THE COMPLAINANT**

The Complainant indicated that the owner did send in the 2008 information as was requested by the Respondent pursuant to s.294 and s. 295 of the MGA. Therefore, the Complainant did not agree to exclude the five pages of the Complainant's evidence i.e pages 3, 10, 11, 15 and 16 as requested by the Respondent.

## **POSITION OF THE RESPONDENT**

1. The Respondent issued requests for information under s. 294(1)(b) and s. 295(1) of the MGA.
2. No response was provided by the Complainant to those requests.
3. The Complainant now wishes to provide that information in support of its request to reduce the assessment to \$24,976,500.
4. The provisions of s.9(3) of MRAC provide that the Board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.
5. The information appears on pages 3, 10, 11, 15 and 16 of the evidence disclosure exchanged by the Complainant and intended to be introduced at this hearing. Therefore it needs to be excluded.
6. This information is needed by the Respondent in a comparative format covering three years being 2006, 2007 and 2008 in order to update the three year rolling period used in hotel assessments.
7. The information must be available by the assessment date of July 1, 2009 for the 2010 taxation year. Therefore receiving it piecemeal from other sources at a later date does not allow its timely use in arriving at the assessment for the year in question.

## **DECISION**

After hearing representation by both parties, the Board accepted the position of the Respondent that section 294 and 295 must be upheld and ruled that the Complainant would not be allowed to present pages 3, 10, 11, 15, and 16 of the Complainant's evidence.

Although the Complainant stated that a reply to the Respondent's request was made, no evidence of such compliance was presented.

## **MERIT HEARING**

### **BACKGROUND**

The subject property is a limited service hotel, with 224 rooms, two restaurants and a gift shop, known as the Greenwood Inn.

### **ISSUES**

Is the assessment of the subject property fair and equitable?

### **LEGISLATION**

#### ***Matters Relating to Assessment Complaints Regulation AR310/2009***

s. 9(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

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

- 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.
- (2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.
- (3) An assessor appointed by a municipality must, in accordance with the regulations, provide the Minister with information that the Minister requires about property in that municipality.
- s. 294(1) After giving reasonable notice to the owner or occupier of any property, an assessor may at any reasonable time, for the purpose of preparing an assessment of the property or determining if the property is to be assessed,
- (a) enter on and inspect the property,
  - (b) request anything to be produced to assist the assessor in preparing the assessment or determining if the property is to be assessed, and
  - (c) make copies of anything necessary to the inspection.
- (2) When carrying out duties under subsection (1), an assessor must produce identification on request.
- (3) An assessor must, in accordance with the regulations, inform the owner or occupier of any property of the purpose for which information is being collected under this section and section 295.
- s. 295(1) A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.
- (2) An agency accredited under the *Safety Codes Act* must release, on request by the assessor, information or documents respecting a permit issued under the *Safety Codes Act*.
  - (3) An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.
  - (4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request.
- 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)
  - d) the assessments of similar property or businesses in the same municipality.

**POSITION OF THE COMPLAINANT**

The case for the reduction of assessment is based on the financial information in the Complainant's evidence package. However, it was determined by the Board in a decision on the Preliminary Matter that this information would not be allowed to be heard.

The Complainant presented no further evidence to support the reduction in assessment. and the Complainant requested that the assessment be reduced to \$24,976,500.

## **POSITION OF THE RESPONDENT**

The Respondent maintains that the Complainant has the burden of proof and has not met the onus of having to prove his case. The requirement is that the Complainant must provide sufficiently convincing evidence that shows the assessment is incorrect and requiring the alteration and what that alteration amounts to. In this case the Complainant is unable to introduce any evidence and thus unable to shift the evidentiary onus. A decision of the Board must be based on a factual foundation and without such information no decision can be reached.

The Respondent submitted a short brief on the basis used for the assessment, noting that without the 2008 information from the Complainant to compare with the 2007 and 2006 financial statements, an estimate was necessary to arrive at the base income to which the ancillary values of the two restaurants and one gift shop were added to arrive at the assessed value.

## **DECISION**

The Board agrees that the Complainant did not meet the burden of proof and that the assessment, even though based on estimations, is fair and equitable.

## **REASONS FOR THE DECISION**

The Board recognizes that the standard practice of estimating assessments based on prior years financials was appropriately used by the Respondent in this case.

## **DISSENTING OPINION AND REASONS**

There was no dissenting opinion.

Dated this 26<sup>th</sup> day of October, 2010 A.D., 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: Municipal Government Board  
Fortis Properties Corporation