



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON, ALBERTA T5J 2R7
(780) 496-5026 FAX (780) 496-8199

July 5, 2010

NOTICE OF DECISION NO. 0098 66/10

990963 ALBERTA LTD. o/a DERRICK MOTEL
3925 GATEWAY BLVD
EDMONTON, ALBERTA
T6J 5H2

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 Assessment Review Board (ARB) from a hearing held on June 28, 2010 respecting an appeal on the 2010 Annual New Realty Assessment.

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Year
8990301	3925 Gateway Blvd. NW	Plan: 6531KS Block:1 Lot: 1	3,549,000	Annual New	2010

Before:

Warren Garten, Presiding Officer
Thomas Eapen, Board Member
John Braim, Board Member

Persons Appearing: Complainant

Josan Raka Josan (990963 AB Ltd.)

Persons Appearing: Respondent

Shawna Pollard – City of Edmonton Assessor
Rebecca Ratti – City of Edmonton Law Branch

PRELIMINARY ISSUES

Did the Complainant provide proper disclosure according to s. 8(2)(a)(i) of *Matters Relating to Assessment Complaints Regulation*?

DECISION

The Board has decided that there was sufficient evidence to allow the hearing to proceed.

REASONS

Mr. Josan is a part owner and director of the company (990963 AB Ltd. O/A Derrick Motel. 3925 Gateway Blvd. Edmonton AB T6J 5H2) which currently operates the Derrick Motel under a Purchase and Sale Agreement with a Caveat registered on title June 1, 2009.



The City provided an e-mail dated June 1, 2010 which stated that the ARB did not receive disclosure documents from the Complainant. Upon further review the Board discovered that the ARB did receive the disclosure package on April 28, 2010 as the evidence package was attached to an e-mail on April 28, 2010 and entered by the ARB on April 29, 2010. Mr. Josan did swear under oath that he had forwarded the evidence package by e-mail to both the City of Edmonton and the ARB on the same day. No evidence was provided as proof that in fact the e-mail was sent on April 28, 2010 to the City. The City of Edmonton did not obtain a copy of the claimant's disclosure from the ARB as a result of the e-mail sent to the City from the ARB on June 1, 2010. However the city proceeded to respond with a completed package on June 14, 2010 within the required timelines. There appears to be a communication problem between the City of Edmonton and the ARB with regards to this appeal. The City of Edmonton, even though they did not receive any disclosure documents, did file their response thus fulfilling the requirement under the **s. 8(2)(b)** of the *Matters Relating to Assessment Complaints Regulation*.

The City of Edmonton did request a postponement. However the Board concluded that all the required disclosures were available and disclosed on time in order for the hearing to proceed.

MERIT ISSUES

1. Fair and Equitable: Assessment too high based on an appraisal dated 2008 for \$2,250,000 and a Purchase and Sale Agreement in 2009 for \$2,250,000.
2. Income Valuation: A discrepancy between the Actual Income and City of Edmonton proforma income. Proforma shows revenue of \$924,000 and 2009 actual revenue is \$397,000.

LEGISLATION

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

Duty to provide information

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.

s. 295(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.

Decisions of assessment review Board

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.

Matters Relating to Assessment Complaints, AR 310/2009;

Postponement or adjournment of hearing



15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

POSITION OF THE COMPLAINANT

1. Complainant provided a summary page of an appraisal from Altus Group dated October 24, 2008 effective August 26, 2008 for \$2,250,000. This appraisal was commissioned by Solmex Inc. of #6, 1480 Marine Drive, North Vancouver B.C. V7P 1T6.

Complainant did produce a copy of the Purchase and Sale agreement between BELMEX Inc and 990963 Alberta Ltd. Dated September 24, 2008 for a value as per appraisal by Altus Group which was an arms length transaction. Complainant stated that conditions were waived and deposits were transferred. Thus a Caveat was registered (June 1, 2009) in accordance with the agreement. Completion date was established in the purchase and sale agreement as December 15, 2008 however several issues arose and the closing date did not proceed as anticipated and has been postponed to February 1, 2011.

2. Complainant provided a stabilized revenue statement with a market value of \$1,112,390 however will settle for an assessed value of \$2,250,000. Complainant further provided a portion of a Notice to Reader financial statement for 2006, 2007 and 2008 from Belmex Inc. with displayed adjustments for assessment purposes

POSITION OF THE RESPONDENT

1. Respondent's position for the appraisal issue is that there is only a summary page disclosed and must be read with as follows; "to avoid ambiguity, the following pages (with the addendum) must be read in their entirety, since the detail the valuation methods and supporting data that establish the concluded value". Furthermore there was no adjustment provided between the appraisal date and July 1, 2009 (Valuation Date).

Respondent's position is that the full Purchase and Sale Agreement has not been disclosed as the additional Addenda were not included in the disclosure documents. These included postponement of closing date and possible additional changes to the terms of the agreement. Respondent's position in addition was that the sale was invalid as the title did not change.

2. Respondent did not receive financial information over the years as required and requested under section 295(1) of the MGA. The City did receive financial information in February 2010 which is Post Facto.

The Financial Statements were incomplete and unaudited and the City requested that little or no weighting be applied to the Board's decision based on this information provided to the Respondent.

The Respondent's position is that there is a huge difference (in excess of \$1,100,000) between the Altus Appraisal and the Valuation provided by the Complainant which brings into question the validity of the Complainant's position.

DECISION

Confirmed assessment at \$3,549,000

REASONS FOR THE DECISION

1. The Appraisal was incomplete evidence with just the summary page provided and no way of determining how the value was arrived at. As a result, the Board has placed no weight to the appraisal

The Purchase and Sale agreement was incomplete evidence as the Addenda were not included in the disclosure documents so the final terms and conditions could not be determined. The original Purchase and Sale was altered due to the extension of the closing date to February 1, 2011 and other unknown terms could not be established.

In addition, at the time when the purchase and sale agreement was executed, the final purchase price was not established. There was a statement pertaining to an appraisal by Altus Group however there was no evidence of a final price which could be cross referenced to the Purchase and Sale agreement. As a result the Board has placed little weight was given to the Purchase and Sale agreement

2. Financial information was not provided to the City over the years which is a requirement under section 295(1) of the Municipal Government Act.

The information subsequently provided with the disclosure documents were incomplete and unaudited with a “notice to reader” statement. As a result the Board has placed no weight to the financial information.

The \$1,100,000 difference between the Complainant’s value and the Appraisal value provided further doubt of establishing the true value of the subject property based on the income approach. The Board has given no weight to the financial information.

Dated this 5th day of July, 2010 at the City of Edmonton, in the Province of Alberta.

Presiding Officer

CC: JOSAN, RAKA/734540 ALBERTA LTD., PERMEX INC.,