



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON, ALBERTA T5J 2R7
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July 5, 2010

NOTICE OF DECISION NO. 0098 67/10

990963 ALBERTA LTD. O/A ECONO LODGE SOUTH THE CITY OF EDMONTON
3925 GATEWAY ASSESSMENT AND TAXATION BRANCH
EDMONTON, ALBERTA 600 CHANCERY HALL
T6J 5H2 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
8990277	4003 Gateway Blvd.	Plan: 563MC Lot: 10	4,545,500	Annual New	2010

Before:

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

Persons Appearing: Complainant

Raka Josan (990963 AB Ltd.)

Persons Appearing: Respondent

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

PRELIMINARY ISSUES

1. Did the Complainant have the right to act on behalf of the ownership of the subject property under appeal?
2. Did the Complainant provide disclosure according to s.8(2)(a)(i) of MRAC? Complainant claims disclosure was sent via e-mail to the City of Edmonton on April 30, 2010, but cannot provide evidence as to the existence of said disclosure.

DECISION

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



2. The Board has decided that in the interest of Natural Justice that this appeal will be heard and the evidence admitted.

REASONS

1. Mr. Josan is a part owner and director of the company (990963 AB Ltd. O/A Econolodge South. 3925 Gateway Blvd. Edmonton AB T6J 5H2) which currently operates Econolodge under a Purchase and Sale Agreement with a Caveat registered on title June 1, 2009 Registration number 092 174 530. It has been established that Mr. Josan has the right to represent the owner(s) in this appeal as a significant amount of money (\$1,000,000) has been invested to date. The Respondent did raise a concern that title had not yet transferred, however there was sufficient evidence that the Complainant did have a significant interest in the subject property.

2. The ARB did receive the evidence package on April 30, 2010 as the evidence package was attached to an e-mail on April 30, 2010 and entered by the ARB on May 6, 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 30, 2010. The City of Edmonton did however obtain a copy of the Complainant's disclosure from the ARB on June 1, 2010 and proceeded to respond with a completed package on June 14, 2010 within the required timelines. It appears to the Board that there was sufficient time for the city to respond to the Complainant's disclosure documents (which the city have done).

MERIT ISSUES

1. Fair and Equitable: Assessment too high based on an appraisal dated 2008 for \$3,500,000 and a Purchase and Sale Agreement in 2009 for \$3,600,000.
2. Income Valuation: A discrepancy between the Actual Income and City of Edmonton proforma income.

NOTE: Complainant requested an adjustment of the Assessment for 2010 of \$3,500,000 from \$4,545.500.

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 3, 2008 effective August 26, 2008 for \$3,500,000. This appraisal was commissioned by Solmex Inc. of #6,, 1480 Marine Drive, North Vancouver B.C. V7P 1T6 which is a different company than the name listed on title which is Almex Inc. of 103, 10171 Saskatchewan Drive, Edmonton, Alberta, T6E 4R5.

Complainant did produce a copy of the Purchase and Sale agreement between ALMEX Inc and 990963 Alberta Ltd. Dated April 16, 2009 for \$3,600,000. this is an arms length transaction with a vendor take back mortgage of \$2,600,000 for 16 months. Complainant stated that conditions have been waived and deposits have been 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 September 1, 2009 however several issues arose and the closing date did not proceed as anticipated and has been postponed to January 1, 2011.

2. Complainant provided a stabilized revenue statement with a market value of \$2,477,445 however will settle for an assessed value of \$3,500,000. Complainant further provided a portion of a Notice to Reader financial statement for 2007 and 2008 from Solmex Inc. with displayed adjustments for assessment purposes.

POSITION OF THE RESPONDENT

1. Respondent position for the appraisal is that there is only a summary page disclosed and must be read 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 time adjustment provided between the appraisal date and July 1, 2009 (Valuation Date).

Respondent 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 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 request 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 \$1,000,000) between the Altus Appraisal and the Valuation provided by the Complainant which brings into question the validity of the Complainant's position.

The Respondent has provided 6 comparables to support the assessment value.

DECISION

Confirmed assessment at \$4,545,500

REASONS FOR THE DECISION

1. The Appraisal was incomplete evidence with only the summary page provided and the Board has no way of determining how the value was arrived at. Furthermore there was no time adjustment between August 26, 2008 and July 1, 2009. As a result, the Board placed no weight on 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 January 1, 2011 and other unknown terms could not be established. As a result, the Board placed little weight on 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" overview statement only. As a result, the Board placed little weight on the financial information

The \$1,000,000 difference between the Complainant's value and the Appraisal value provided further doubt of establishing the true value based on the income approach. As a result the Board has placed no weight to the financial information provided.

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

Presiding Officer

CC: ALMEX INC

