



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION NO. 0098 80/10

Altus Group Ltd.
17327 - 106A AVE
Edmonton AB T56 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 a hearing held on June 28 – 30 and July 2, 2010 respecting a complaint for:

Roll Number 3041233	Municipal Address 9934-105 Street NW	Legal Description Plan NB Block 5 Lots 79 and 80
Assessed Value \$1,785,000	Assessment Type \$730,500	Assessment Notice for: 2010

Before:

Steven Kashuba, Presiding Officer
Brian Frost, Board Member
Terri Mann, Board Member

Board Officer:

Segun Kaffo

Persons Appearing: Complainant

John Trelford
Chris Buchanan

Persons Appearing: Respondent

Chris Rumsey, Assessor
Tanya Smith, Law Branch

In rendering its decision on Roll #3041233, it should be noted that this Roll Number is considered to be the Master File and that the decision of the board on this file also applies to the fifty-two (52) additional Roll Numbers as presented in ***Schedule A*** below. ***Schedule A*** also presents the assessed value for each Roll Number along with the Complainant's requested assessment, additional issues, municipal address, and legal description.

SCHEDULE A

Roll Number	Assessed Value	Requested Assessment	Additional Issues	Municipal Address	Legal Description
3041233	1,785,000	730,500	MF	9934 105 STREET NW	Plan: NB Block: 5 Lot: 79 & 80
3068608	1,212,000	493,500		10318A 100 AVENUE NW	Plan: NB Block: 3 Lot: 64 & 65
3068756	4,720,500	1,672,000	D	10019 104 STREET NW	Plan: NB Block: 3 Lot: 64, 65, 67 & 68
3068905	1,211,000	504,000		10027 104 STREET NW	Plan: NB Block: 3 Lot: 69
3072709	1,206,000	502,000		10133 104 STREET NW	Plan: NB1 Block: 3 Lot: 160
3073012	1,208,500	492,000	D	10153 104 STREET NW	Plan: NB1 Block: 3 Lot: 163
3098506	1,327,000	504,500	D	10420 100 AVENUE NW	Plan: NB Block: 4 Lot: 51 & 52
3098605	1,213,500	494,500		10009 105 STREET NW	Plan: NB Block: 4 Lot: 51 & 52
3098704	1,213,500	494,500	D	10011 105 STREET NW	Plan: NB Block: 4 Lot: 53
10014941	1,291,500	487,500			Plan: NB Block: 5 Lot: 77, 78 & 79
10014942	1,791,500	733,500			Plan: NB Block: 5 Lot: 77, 78 & 79
3130200	1,191,000	488,000		9914 105 STREET NW	Plan: NB Block: 5 Lot: 84
10014626	949,500	394,500		9901 108 STREET NW	Plan: NB Block: 7 Lot: 21 & 22
10014627	1,302,500	600,000			Plan: NB Block: 7 Lot: 21 & 22
10014630	1,343,000	525,000		10745 JASPER AVENUE NW	Plan: NB Block: 7 Lot: 42
10014633	1,343,000	527,000	D	10745 JASPER AVENUE NW	Plan: NB Block: 7 Lot: 43
10014623	1,343,000	525,000		10745 JASPER AVENUE NW	Plan: NB Block: 7 Lot: 44
10014616	1,195,000	488,500	D		Plan: B2 Block: 7 Lot: 118, 119, 120, 121 & 122
3196557	1,205,000	501,500		10163 108 STREET NW	Plan: B2 Block: 7 Lot: 100 / Plan: B2 Block: 7 Lot: 99
3196706	1,205,000	501,500		10169 108	Plan: B2 Block: 7

				STREET NW	Lot: 100 & Lot: 99
3197902	1,191,000	488,000		10325 108 STREET NW	Plan: B2 Block: 7 Lot: 117
10014609	1,195,000	488,500	DT	10363 108 STREET NW	Plan: B2 Block: 7 Lot: 118, 119, 120, 121 & 122
10014612	1,195,000	488,500	DT		Plan: B2 Block: 7 Lot: 118, 119, 120, 121 & 122
10014615	1,195,000	488,500			Plan: B2 Block: 7 Lot: 118, 119, 120, 121 & 122
10014618	1,195,000	488,500	D		Plan: B2 Block: 7 Lot: 118, 119, 120, 121 & 122
3199601	1,191,000	488,000		10174 107 STREET NW	Plan: B2 Block: 7 Lot: 145
3199908	1,191,000	488,000		10154 107 STREET NW	Plan: B2 Block: 7 Lot: 148
10014631	1,195,000	488,500			Plan: B2 Block: 7 Lot: 146
3200003	599,000	245,500		10144 107 STREET NW	Plan: B2 Block: 7 Lot: 149
10014632	1,195,000	488,000			Plan: B2 Block: 7 Lot: 147
3200102	591,500	242,000		10148 107 STREET NW	Plan: B2 Block: 7 Lot: 149
3200201	1,189,500	487,000		10138 107 STREET NW	Plan: B2 Block: 7 Lot: 150
3217205	1,126,500	459,000	D	10037 109 STREET NW	Plan: NB Block: 8 Lot: 39
3217254	1,126,000	459,000	D	10039 109 STREET NW	Plan: NB Block: 8 Lot: 38
10014937	873,000	309,500	D LRT		Plan: NB Block: 8 Lot: 41/ Plan: NB Block: 8 Lot: 42
10014938	838,000	328,000	LRT		Plan: NB Block: 8 Lot: 41/ Plan: NB Block: 8 Lot: 42
3217502	838,500	328,000	LRT	10845 JASPER AVENUE NW	Plan: B2 Block: 8 Lot: 43
3223500	1,190,500	487,500		10324 108 STREET NW	Plan: B2 Block: 8 Lot: 129
3225208	1,207,500	502,500		10138 108 STREET NW	Plan: B2 Block: 8 Lot: 150
10014636	1,208,500	492,500	DT		Plan: B2 Block: 8 Lot: 151 / Plan: B2

					Block: 8 Lot: 152
10014637	1,208,500	492,000		10124 108 STREET NW	Plan: B2 Block: 8 Lot: 151 / Plan: B2 Block: 8 Lot: 152
9942675	1,837,000	731,500		10030 103 AVENUE NW	Plan: 9624099 Lot: 91B
3577251	1,259,500	501,500		10030 103 AVENUE NW	Plan: F Lot: 97
3577608	1,109,500	393,500	D	10301 101 STREET NW	Plan: 4686S Lot: A
3577707	954,500	373,000	D	10309 101 STREET NW	Plan: 4686S Lot: B
3577806	989,000	356,500	D	10315 101 STREET NW	Plan: 4686S Lot: C
4037198	1,046,000	409,500		10085 100 STREET NW	Plan: NE Lot: 2 / Plan: NE Lot: 3
4041125	3,607,500	1,477,500			Plan: 8522037 Lot: 3
10045285	1,191,500	488,000			Plan: NB Block: 5 Lot: 81, 82 & Lot: 83
10045286	1,192,00	488,000			Plan: NB Block: 5 Lot: 81, 82 & Lot: 83
10045288	1,192,500	488,000			Plan: NB Block: 5 Lot: 81, 82 & Lot: 83
3222601	1,125,000	468,400		10245 109 STREET NW	Plan: B2 Block: 8 Lot: 110
10143127	3,247,000	1,271,000			Plan: F Lot: 7 / Plan: F Lot: 7-9 / Plan: F Lot: 8 / Plan: F Lot: 9

Key: MF – Master file
D – Depreciation is an issue
DT – No depreciation table
LRT – Over LRT line

PRELIMINARY MATTERS

At the outset of the hearing the Complainant brought forward three preliminary matters while the Respondent brought forward two preliminary matters. These preliminary matters are as follows:

1. The Complainant submitted that the Respondent's website disclosure was insufficient and that in particular, the Respondent failed to disclose four sales comparables;

2. The Complainant submitted that the Respondent failed to reply in a satisfactory manner to their s.300 request for information pursuant to the *Municipal Government Act*;
3. The Respondent submitted that the Complainant's rebuttal evidence is not admissible as it is not proper rebuttal evidence.
4. The Respondent submitted that the Complainant did not identify depreciation as an issue in their Complaint Form, and as a result, the Complainant is precluded from providing evidence on this matter.

Preliminary Matter #1: The City's website disclosure is insufficient

The position of the Complainant

The Complainant submitted that the Respondent's disclosure via the internet (website disclosure) was insufficient, as it did not meet the requirements of s.8 and s.9 of *Matters Relating to Assessment Complaints* (MRAC). The Complainant further submitted that the website disclosure was incomplete and inaccurate by providing illustrations in support of this submission. The Complainant argued that as a result, all of the Respondent's sales comparables should be excluded.

The Complainant noted that four sales comparables which were referenced in the Respondent's disclosure provided to the board at the hearing, had not been made available in the website disclosure, and that therefore these sales, in particular, must be excluded.

The position of the Respondent

The Respondent argued that their website disclosure was adequate, and that the disclosure had been properly made in the *title transfers* which were readily available on the City of Edmonton's website. In this regard, the Respondent did acknowledge that there were inaccuracies in the information provided on the website but argued that the Complainant was responsible '*...for undertaking their own due diligence.*'

The Respondent acknowledged that four sales comparables (R-3, page 15, roll numbers 10020550/1, 10014626/7, 3221306, and 3105681) had not been disclosed to the Complainant, in the web disclosure.

Decision of the board as regards Preliminary Matter #1

Having heard the arguments of both parties, the board finds that for the purposes of this hearing, the element of disclosure under s.8 and s.9 of MRAC have been met by the Respondent through the provision of information contained in the website as regards *sales comparables* and/or *title transfers*. In this regard, the board concludes that the provision of this information by the Respondent is sufficient in nature so as to allow the Complainant to prepare their evidentiary package in support of their request for an adjustment to the assessment. However, the board notes that the disclosure should, to the extent possible, be accurate, complete, and specific to the information requested by the Complainant. Notwithstanding, the board agrees that each party must indeed conduct their own due diligence.

As regards the four sales comparables that were not provided, the board finds that these sales comparables were not properly disclosed, and must be excluded from evidence.

Preliminary Matter #2: The City failed to reply in a satisfactory manner to a request for information pursuant to s.300 of the Municipal Government Act.

Position of the Complainant

The Complainant asserted that they made a formal request of the City pursuant to section 300 of the *Municipal Government Act* to ‘...see or receive a summary of the assessment of any assessed property in the municipality...’ through which they could identify the specific adjustments to the general valuation of all downtown lands, including corner adjustments, adjustments made to remnant lots, adjustments made for access to arterial roadways, and size adjustment factors. In particular, they stated that they had made the following request for information from the municipality:

- *the land base rate for vacant land assessments downtown and how this value was derived (including sales used and all adjustments to the sales).*
- *an explanation of all regular adjustments made to properties, including corner adjustments made to remnant lots, and adjustments made for access to arterial roadways and size adjustment parameters.*
- *Time adjustments for multi-family land (C-2, Tab 2).*

The Complainant did acknowledge that the City of Edmonton website posted title transfer information on non residential sales in the city. However, they complained that it was difficult to access this information and cost prohibitive. The Complainant specifically argued that a s.300 request entitled them to a receipt of sales comparables. The Complainant emphasized to the board the consequence of the City’s failure to comply with the s.300 request, enumerated in s.9(4) of MRAC, being that the board could not hear any of the Respondent’s evidence pertaining to information that was requested but not received (i.e., sales comparables). Finally, the Complainant noted that they did not receive specific information on adjustments other than a handwritten notation stating, *no time adjustments*.

Position of the Respondent

The Respondent submitted that the Complainant had not made a s. 300 request or alternatively, that the request was not in the proper form (i.e., not in the form prescribed by the municipality). The Respondent submitted that, in any event, homeowners had access to the information requested, that the voluminous list of sales utilized was readily available for review on the City of Edmonton website, and that ultimately the Complainant was responsible for their own due diligence in reviewing, identifying, researching, and confirming the validity of those sales which were of particular interest as regards the assessment of the subject property.

The Respondent acknowledged that the items enumerated in s.300(1.1) are required for provision pursuant to a valid s.300 request; however, denied that the s.300 request would entitle an assessed person to receive comparable sales.

Finally, the Respondent asserted that the board did not have jurisdiction to undertake a review of the sufficiency of documentation provided in reply to an s. 300 request. In this regard, the Respondent submitted that only the Minister has authority to determine whether a municipality has failed to comply with an assessed person's request under section 299 or 300 of the Act, pursuant to MRAT s.27.6.

Decision of the board as regards Preliminary Matter #2

The board finds that it does have jurisdiction to undertake an analysis of whether a reply by the municipality to a Complainant, pursuant to a s.300 request, is satisfactory. In this regard, the board has reviewed MGA s.460(5)(c) which states that a complaint may be about an *assessment*. Also, the board reviewed MGA s.460.1(2) which states that, *...subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).*

The board also considered MRAC s.9(4) which states that *A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant*, and concludes that as a practical and necessary step to the imposition of the consequence enumerated in s. 9(4), the board must undertake a review of the sufficiency of a s.300 reply, else s. 9(4) would be rendered redundant.

The board, in its deliberations, further analyzed the issue as to whether the s.300 request was made properly. The board finds that the request made by the Complainant was directed to the proper party, it was made in written form, and it was clear in its query, albeit possibly not in the form prescribed by the municipality. The board noted that MRAC s.51 specifies an agent may not file a complaint or act for an assessed person unless the taxpayer has prepared and filed with the clerk or administrator an Assessment Complaints Agent Authorization form set out in Schedule 4. In the present matter, an agent authorization form was executed. The board reviewed Schedule 4 ss.5 which states, *I understand that this authorization does not act as an authorization of agency for the purposes of s.299 or 300 of the Municipal Government Act*. The board notes that this clause may serve to negate the agency authorization form for the purpose of a s.300 request.

The board notes that the municipality *may* provide an assessed person with a summary of the assessment through an internet website that is readily accessible to the assessed person pursuant to s.27.5(1)(c) of MRAT. The Respondent advised the board that information in response to a s.300 request was available on the City of Edmonton website. The board finds that, pursuant to s.27.5(1)(c), website dissemination of information pursuant to a s.300 request is indeed acceptable.

Lastly, it is noted that the Ministerial compliance review as enumerated in MRAT s.27.6, is not necessarily correlated with an assessment complaint. Hence, MRAT s.27.6 refers to the request by *an assessed person*. In contrast, MRAC is intended to apply in the course of a hearing as it specifically refers to the request by a *complainant*.

As to what is necessary for the satisfaction of a s.300 reply, the board reviewed MGA s.300(1.1). The board further reviewed s.27.1 and 27.3 of MRAT, which provides definitions for

assessment items and explains key factors and variables of the valuation model applied in preparing the assessment of a property.

The board notes that the Complainant provided no legislation by which to persuade the board that *sales comparables* would be a *component or variable of the valuation model* applied in preparing the assessment of the property or a necessary component of a summary of an assessment. The board finds that the above legislation does not reference *sales comparables*.

The board notes that sales comparables are typically used by the Respondent, during the course of a hearing, to defend an assessment. The board further notes that the municipality relies on mass appraisal. The municipality did make available to the Respondent a volume of title transfers which were available by way of internet disclosure. Finally, the board notes that sales comparables were not a delineated item in the relevant legislation.

In view of the foregoing, in the circumstance, the board is not persuaded that a s.300 request would necessitate provision, by the municipality, of discrete sales comparables. As a result, MRAC s.9(4) is not triggered and the board is not precluded from hearing evidence regarding the Respondent's sales comparables. Finally, the board notes that it was unclear whether adjustment information was provided; however, the Complainant did not request a consequence for the omission in the provision of this information but in any event, the board did not rely on the information pertaining to such evidence from the Respondent, hence there was no evidence to preclude on this ground.

Preliminary Matter #3: The Complainant's rebuttal evidence is not admissible as it is not proper rebuttal evidence

Position of the Respondent

The Respondent brought a preliminary application to exclude the Complainant's Rebuttal Evidence (C-2, Tabs 2, 3, 4, and 5), arguing that the evidence was not truly rebuttal evidence but rather an extension of the Respondent's evidence contained in their disclosure. It was the position of the Respondent that there exists no reason by which the Complainant could not have included all of their documentary and testimonial evidence within their disclosure, consistent with the provisions under s.8 and s. 9 of MRAC.

Position of the Complainant

The Complainant argued that the rebuttal evidence was clearly in response to the Respondent's disclosure evidence.

Decision of the board as regards Preliminary Matter #3

The board reviewed the materials contained in C-2.

- a. The board noted that Tab 2 contains letters from the Complainant requesting information pursuant to a s.300 request and various replies from the City of Edmonton. The board finds that this evidence is, indeed, rebuttal evidence as the Complainant could not have predicted that the Respondent would have denied that the Complainant made a s.300 request, as submitted by the Complainant. As

a result, this evidence is filed in reply to the Respondent's evidence, and is therefore admissible as rebuttal evidence.

- b. The board noted that Tab 3 contains copies of land title searches of properties deemed by the Complainant to be multi-lot parcels as well as copies of property sales provided on the City of Edmonton website. As this is fresh evidence and not filed in reply to the Respondent's evidence, the board finds that this submission should be expunged from the record.
- c. The board noted that Tab 4 consists of *case law* and an *advisory bulletin*. In addition, this bundle contains a copy of title for the subject property, and a City of Edmonton map indicating utility connection locations. The board scrutinized the contents therein and finds that the inclusion of case law and an advisory bulletin is proper rebuttal evidence and therefore admissible. However, the board finds that the pages titled Statement of Position of Water and/or Sewer Line along with the adjoining map (C-2, Tab 4, pages 43 – 52) is new evidence, and therefore inadmissible.
- d. Finally, the board reviewed C-2, Tab 5, and finds that it contains an enlargement of the utilities location map referenced in the above section. As this is fresh evidence, the board finds this submission inadmissible.

Preliminary Matter #4: The Complainant did not identify depreciation as an issue in their issue statement, and as a result, the Complainant is precluded from providing evidence on this matter.

Position of Respondent

The Respondent submitted that the Complainant had not indicated depreciation as an issue on the Complaint Form and that pursuant to s. 9(1) of MRAC, the composite assessment review board could not hear this matter. The board examined the issues contained in the Complaint Form (R-3, pages 12 and 13).

Position of Complainant

The Complainant argued that the depreciation is subsumed in issue #2, above.

Decision of the board as regards Preliminary Matter #4

The board finds that the depreciation issue was referenced and subsumed in issue #2 which referred to use, quality and physical condition of the subject, which would require a determination on depreciation. As a result, the board is neither precluded from hearing this issue nor the evidence related thereto.

MERITS OF THE HEARING

SCHEDULE OF ISSUES AS PRESENTED BY THE COMPLAINANT

1. The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta Regulation 220/204.
2. The use, quality, and physical condition attributed by the municipality to the subject property are incorrect, inequitable and do not satisfy the requirement of Section 289(2) of the Municipal Government Act.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.
4. The assessment of the subject property is in excess of its market value for assessment purposes.
5. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
6. The information requested from the municipality pursuant to Section 299 or 300 of the Municipal Government Act was not provided or was so expensive that the costs impeded access to information.
7. The classification of the subject premise is neither fair, equitable, nor correct.
8. The influence adjustment factors applied to the assessment have been inequitably applied to the base rate.
9. An inadequate allowance was applied for land-use restrictions and caveats.
10. The size/shape/topography of the subject property has not been adequately adjusted for in the assessment.
11. The impact of environment remediation costs and associated stigmas has not been adequately captured in the assessed value.
12. This property reflects a Double Taxation as the value of this parcel has already been captured in the assessment of the parent parcel.

ISSUES

The Complainant presented twelve issues (C-1, page 3) as the subject of this complaint. However, the Complainant abandoned issues number 9, 11, and 12. Issue numbers 1, 6, 7, 8, and 10 are substantially addressed in the section entitled Preliminary Matters, while the remaining issues 2, 3, 4, and 5 can be consolidated as:

1. What is the consequence of the Complainant's failure to attach a depreciation table to the evidence package of certain Rolls?
2. Did the City properly apply the value of the depreciation in determining the assessment of the subject property? and
3. Is the assessment fair and correct, reflective of market value?

LEGISLATION

Matters Relating to Assessment Complaints Regulation AR 310/2009 (MRAC);

S. 9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

S. 8(2) *If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*

b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;

S.9(2) *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

S.9(4) *A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.*

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

1(v) *"parcel of land" means*

(i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;

(ii) where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;

(iii) a quarter section of land according to the system of surveys under the Surveys Act or any other area of land described on a certificate of title;

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.

S.300 *An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.*

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property;

(b) the size of the parcel of land;

(c) the age and size or measurement of any improvements;

(d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;

(e) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

s. 467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

s. 299 An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

(a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,

(b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and

(c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

S. 301 A municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.

S. 285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

Issue #1: What is the consequence of the Complainant's failure to attach a depreciation table to certain Rolls?

Position of Respondent

The Respondent brought an evidentiary issue that the Complainant had failed to attach the depreciation table on briefs pertaining to Rolls as outlined in Additional Issues (DT) in Schedule A. The Respondent's position was that the board had therefore no evidence upon which to apply depreciation on these Rolls.

Position of Complainant

The Complainant submitted that the depreciation evidence was already known to the Respondent because the City of Edmonton used the Marshall & Swift cost table routinely. In the alternative, the Complainant submitted that the board was privy to the evidence, as it was carried forward from other Rolls.

Decision of the board as regards Issue #1

The board accepted the Complainant's submissions, and therefore it was irrelevant that the Complainant failed to attach the depreciation table to certain Rolls (identified as DT in Schedule A).

Issue #2: Did the City properly apply the depreciation?

Position of Complainant

The Complainant is of the position that the net items on Rolls as outlined in Additional Issues (D) in **Schedule A** should have had depreciation applied to them in accordance with the Marshall & Swift Costing tables. The Complainant noted that where the Respondent did apply depreciation, it was not applied properly, and a proper application of depreciation to the other rolls would have resulted in a further reduction of assessment. (The Complainant did note; however, that there was a mistake in his depreciation calculation which caused an \$108 increase in the depreciated value of the improvements for the *subject property or master file*).

Position of Respondent

The Respondent indicated that they are in transition with respect to moving from a straight line approach to the application of depreciation to the usage of the Marshall and Swift cost table.

The board's decision as regards the application of depreciation

It is noted that for certain Rolls (reference Schedule A), the Complainant argued that the Respondent did not apply depreciation, although the Respondent acknowledged and confirmed that it is the usual practice for the City of Edmonton to apply depreciation to net items. The board finds that in these circumstances depreciation ought to have been applied. However, the board notes that application of depreciation pursuant to the Marshall & Swift cost table, which

the Complainant advocated, and the Respondent has acknowledged using as well, would impact the respective assessments by less than 1% in variance.

Since the impact of applying depreciation to the assessed value in this particular complaint is less than 1%, the board accepts the Respondent's argument, as supported by ARB and MGB decisions, that the assessment of the subject property should remain unchanged.

In *John Yuen v. The City of Edmonton*, MGB DL 14/09, the board specifically confirmed the 5% range of value and stated as follows:

Bearing in mind the range of values within which an assessment should fall (five percent, plus or minus), the MGB finds that the evidence before it supports a conclusion that the assessment reflects market value and meets the requirement for fairness and equity with comparable properties.

Issue #3: Is the assessment fair, correct and reflective of market value?

Position of Complainant

a. Direct Sales Comparables

The Complainant provided 11 sales comparables (C-1, page 8), noting that these properties had an average Time Adjusted Sales Value Per Square Foot (TASP) of \$101.01 not including the value of the improvements. They argued that this sale price should be applied to the lot under Roll No. 3041233, the *master or cross-reference file*, upon which the assessment values of the other 52 lots should be taken.

b. Equity Comparables

The Complainant provided 25 equity comparables of property assessments in the downtown area, noting that, on average, these comparables had an assessment of \$90.68 per square foot (C-1, page 10) whereas the subject had an assessment of \$158.87 per square foot (Note: with the exception of Roll 3068756 wherein four equity comparables were provided). These comparables contribute to revised assessments as set out in Schedule A.

The Complainant asserted that the taxpayer is entitled to the lower of the *correct market value or the equitable value*, relying on a decision of *Bramalea Ltd. v. British Columbia*, (Assessor of Area No. 9-Vancouver) (1991) 76 D.L.R. (4th) 53 (B.C.C.A.) which recognized the right of a taxpayer to receive equitable treatment.

c. LRT Issue

The Respondent submitted that certain Rolls as outlined in Additional Issues (LRT) in Schedule A had a 35% negative adjustment applied, in that they were impeded as to development or re-development because the underground portion of the LRT was positioned below the lot. The Complainant's position is that the Respondent did not make the Complainant aware of this adjustment and accordingly the Complainant wants an adjustment to the requested assessment to reflect this influence.

d. Value In Use

The Complainant takes the position under Roll 3041233 that the subject is zoned for residential use, and should be assessed as such.

Position of Respondent

a. Direct Sales Comparables

The Respondent carried forward evidence from Master File Roll 3201712 to the within matter, thus, the Respondent herein submitted that the Mass Appraisal technique was utilized which has regard for size, location, study area, and servicing. From this process, a base rate of \$48.90 per square foot was derived (R-2, page 58) which, after adjustments, yielded an assessment of \$1,781,892.00 (R-3, page 11) for a parcel of land measuring 11,216.46864 square feet. In addition, depreciated improvements resulted in a calculation of an assessment of \$1,785,000 (R-2, page 62).

A Sales Comparison chart (R-3, page 15) was provided by the Respondent which reflected Time Adjusted Sales Values of; 1) \$287.43, 2) \$222.01, 3) \$175.10, and 4) \$331.48. Of these sales comparables, the board accepts sales 1 and 3 as exhibiting characteristics similar to that of the subject property, while the other sales comparables were not included in the City's website disclosure as referenced in the decision of the board under *Preliminary Matters*. Nevertheless, the remaining sales data supported a value of \$158.87 per square foot as determined in the Mass Appraisal Model, thus fully supporting the assessed value of \$1,785,000, inclusive of the value of depreciated improvements.

(Note: The assessment values for the remaining 52 lots are presented in Schedule A)

b. Equity Comparables

In contrast to several of the Complainant's comparables which were marginally outside the downtown core, the Respondent provided a total of ten Equity Comparables (R-3, page 16), reflecting an average assessment of \$160.00 per square foot. All are within the area of the City designated as the downtown core (City map, R-3, page 39).

The Respondent disagreed with the Complainant's position that the taxpayer should have the lower of *market* or *equity value*. The Respondent submitted case law that stated that, where there is a clear conflict between *equity* and *market value*, the *latter* should prevail. In this regard, the Respondent relied upon *Bentall Retail Services Inc. v. Vancouver* (Assessor) Area #09 [2006] B.C.J., which clarified the interpretation of *Bramalea*, as it related to equity and range of equitable values (R-4, page 8). The Respondent further relied on a decision of the *Alberta Court*, 697604 *Alberta Ltd. v. Calgary* [2005] A.J. No. 861, wherein the Alberta Court of Queen's Bench stated as follows:

"...where there is a conflict between the actual market value and the factors set out in section 12 (of the Regulation), the market value as defined by the Act should prevail" (R-1, page 9).

c. LRT Issue

The Respondent noted at the hearing that certain Rolls, as outlined in Additional Issues (LRT) in Schedule A, had a 35% negative adjustment applied, in that they were impeded as to development or re-development because the underground portion of the LRT was positioned below the lot. The Respondent notes that this adjustment is already applied to the respective assessments.

d. Value In Use

The Respondent noted that the subject property, although zoned for residential use, is used commercially as a parking lot as at December 31, 2009. As a result, it is the use of the property and not its zoning that is relevant for assessment purposes.

The board's decision as regards whether the assessment is fair and correct

The Complainant presented 11 market sales which reflected an average sales price of \$101.01 per square foot. The board notes that 3 of the sales occurred in 2009, 2 in 2007 and 6 in 2006. As a result, the board was not persuaded by the Complainant's sales comparables for the following reasons:

- Time adjustments for the 2006 sales (Nos. 1 – 6) appear to be inconsistent with sales that were noted as having been days apart wherein the time-adjusted values in percentage amounts were at odds with one another. This caused the board to place less reliance on these sales.
- Sale #2 (R-1, page 19) was purchased by the adjoining owner, bringing into question the potential impact upon the sale price. No further information was provided on this sale.
- Sale #4 involved a sale wherein the 3rd party bought out the interest of the others, and the purchaser also bought the middle lot from one of the parties. The nature of these transactions may have had an impact upon the selling price. No further information was provided on this sale (R-1, page 21).
- The Respondent raised a concern with respect to the 6th sale (which is also the 9th sale, see below). The Respondent provided copies of an email from a Jim Zanello, who was identified as the purchaser, wherein Mr. Zanello indicated that there was evidence of contamination which affected the purchase price (R-1, page 38).
- The 9th sale involved a circumstance wherein the buyer, Luxor, submitted the only bid (R-1, page 26). The comments indicated that the vendor was “*motivated as the sale had to close by March 31, 2009*” and it was an auction sale. As a result, the board placed little weight on this sale.
- The board placed little weight on the 10th sale, due to the fact that it was a much larger site (472,859 square feet v. 11,216 square feet). As well, it was a developed site as it had an improvement on it (Baccarat casino, R-1, page 27). The subject is vacant land.

- The 11th sale was dated December 11, 2009, took place after the valuation date of July 1, 2009, and is therefore *post facto*. The board notes that post facto sales can be used to establish market trends rather than to establish market value. It is noted that this is the same property as referenced in the 6th sale which occurred August 31, 2006, at a price 2.24 times the earlier date, further bringing into question the validity of the time adjustments.

The Complainant presented 25 equity assessments, averaging \$90.68 per square foot. Only six appeared to be comparable, from a commercial use standpoint, to the subject property. Ranging from vacant multi-family land to improved properties, one is an improved gas station, three are small office buildings, thirteen included apartments, and two are parking lots. Since the Complainant did not provide detailed information on these properties in order to establish comparability, the board placed little weight upon the significance of these equity comparables.

The Respondent presented four sales comparables, but two were excluded as the Respondent had not disclosed these sales. The Respondent's remaining sales comparables (#1 and #3) reflected an average time adjusted sale price of \$231.22 per square foot which supports the assessment. And even with the exclusion of the two sales did not discredit the conclusion arrived upon by analysis of the remaining two sales. The board concludes that these comparables are acceptable, as they properly represented the attributes of the subject parcel.

The Respondent's 10 equity comparables fully supported the subject's assessment of \$158.87 per square foot. It is noteworthy that the board excluded five of those comparables as they were part of this total package of challenged assessments, yet even with their exclusion, the assessor's result is supported.

The same ten equity comparables were utilized in all cases where the site under assessment was greater than 10,000 square feet and 20 equity comparables were utilized in cases where the lot area was less than 10,000 square feet. In each instance, five comparables were excluded as a result of their being included as the subject of dispute within this hearing.

In order to further support the assessment of individual lots within a parcel, the Respondent provided an excerpt of an appraisal, undated, that had been requisitioned for a surface parking lots at 10030 – 103 Avenue, and 10301-15 - 101 Street, which correlates with Roll numbers 9942675, 3577251, 3577608, 3577707, 3578806, 3577806. The results of this appraisal were not challenged by the Complainant.

The board finds that the Complainant's evidence has not persuaded the board that the assessment is unfair or incorrect, in particular, the Complainant has not persuaded the board that the assessment is not reflective of market value.

DECISION

The board finds that the Complainant has not met their onus to prove that the assessment is incorrect and, as a result, confirms the assessment on this Roll Number as well as those Roll Numbers presented in Schedule A.

REASONS

In certain Rolls (reference DT, Table A), the Complainant had *inadvertently* neglected to provide the Marshall and Swift depreciation table that had been correctly appended to other Rolls. The Respondent, as a result, submitted that the board did not have the evidence before it to ascertain the depreciation rate to apply.

The board notes that the City of Edmonton historically applied a straight-line depreciation rate but currently applies the Marshall and Swift costing table. This evidence was carried forward to all Rolls. The board also noted that the Complainant had provided evidence of the Marshall and Swift costing table in various Rolls, and the argument portion of their evidence was carried forward. Lastly, the Complainant confirmed that the City correctly applied depreciation pursuant to the Marshall and Swift Cost Table in Roll No. 3098605, and that certain aspects of this application were carried forward.

The board accepts that the exclusion of a depreciation table in the Complainant's evidence was a technical glitch and did not disadvantage the Respondent's case. Further, the board is satisfied that the Respondent is familiar with this evidence, as it had been supplied in the Other Rolls (D). As a result of the foregoing, the board accepts that depreciation, pursuant to the Marshall & Swift depreciation (cost) table, could conceivably be applied to the net items on the enumerated Rolls.

With reference to Schedule A, the board accepts that the City routinely applies depreciation to net items and is satisfied that that depreciation should be applied to net items consistently, pursuant to the Marshall & Swift Cost Table. However, the application of depreciation would result in a variance in the assessment of those properties so affected by less than 1%. In this regard, the board relies on decisions of the ARB and MGB wherein the assessment amount is not disturbed in instances where the change would be less than 5%.

The board places little weight upon the Complainant's evidence as regards six of the eleven sales comparables in that time adjustments appear to be inconsistent with actual sales values. As for the other sales, the board is satisfied that the question of the transactions having taken place at arm's length was brought into question. In addition, the board notes that the attributes of the sales comparables appear to be at variance with those of the subject property. Finally, one sale was consummated after the valuation date of July 1, 2009, thereby bringing into question the element of comparability. As regards the Complainant's ten equity comparables, the board notes that their location in relation to the location of the subject property in the downtown core brings into question the element of equity. As a result, the Complainant did not meet their onus in establishing that the assessment is unfair or incorrect in this regard.

The board reviewed the Respondent's sales comparables, and the board is satisfied that these do exhibit similar attributes to that of the subject property and support the assessment. Finally, the ten equity comparables presented by the Respondent portray characteristics similar to the subject property and support the assessment, as well.

DISSENTING OPINION AND REASONS

No dissenting opinion.

Dated this 30th day of July, 2010 A.D. at the City of Edmonton, in the Province of Alberta.

Presiding Officer

CC: MUNICIPAL GOVERNMENT BOARD
672884 ALBERTA LTD.