



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON, ALBERTA T5J 2R7
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July 22, 2010

NOTICE OF DECISION NO. 0098 91/10

Altus Group
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 a hearing held on July 20, 2010 a complaint for:

Roll Number 1553205	Municipal Address 10629 178 Street NW	Legal Description Plan: 7721110 Block 4 Lot:16
Assessed Value \$625,000	Assessment Type New Annual	Assessment Notice For 2010

Before:

Patricia Mowbrey, Presiding Officer
Francis Ng, Board Member
Brian Carbol, Board Member

Alison Mazoff, Board Officer

Persons Appearing: Complainant
John Trelford

Persons Appearing: Respondent
Gordon Petrunik, Assessor
Rebecca Ratti, Lawyer

PRELIMINARY MATTERS

Issues

1. The Complainant raised, as a preliminary matter, the late disclosure of evidence by the Respondent. The Respondent delivered its evidence to the Complainant one day late (sec. 9 310/2009 Alta). The Complainant's brief concerning this issue was admitted to evidence as C1.
2. The Complainant raised the issue of bias because he had called the Assessment Review Board (ARB) to see if the ARB had a copy of the missing Respondent's disclosure. A day later, the disclosure arrived at the Complainant's office, and it is alleged that the ARB called the assessor's office. The Complainant submitted that he had specifically asked the ARB not to inform the assessor.
3. The Complainant raised the issue that the Respondent did not provide a clear or concise summary of the evidence disclosed.

Decision

1. The decision of the Board is to proceed with the merit hearing and include the Respondent's evidence.
2. The opinion of the Board is that there is no evidence of bias.
3. The decision of the Board is that the appropriate weight will be given to evidence submitted by both parties during the hearing and will be reflected in the decision.

Reasons

1. The Board noted the evidence was delivered only one day late, and the Respondent indicated that it was in error, as a grouping of files were delivered on time. It is apparent to the Board that the evidence package was prepared and ready for delivery, but, in error the file had been missed. The Board found there was no intent to disadvantage the Complainant.
2. The Board understands the responsibility of administration, and there is no apparent evidence to support a claim of bias.
3. It is the responsibility of both parties to submit sufficient evidence to which the other party can respond.

BACKGROUND

The subject property is undeveloped land that is fenced and located at the McNamaka Industrial subdivision of the City of Edmonton. This tax role number 1553205 has an area of 41,586 square feet. This lot is legally defined as Lot 16, Block 4, Plan 7721110. The subject lot has a registered blanket mortgage and fencing common to other lots.

ISSUES

1. Is the subject lot with an individual role number, a parcel of land, or should it be assessed as a part of a larger parcel as identified by the legal description?
2. Is the subject lot with a registered blanket mortgage and fencing common to other lots, a parcel of land, or should it be assessed as a part of a larger parcel as identified by the legal description?
3. Is the fence depreciated and reflected in the assessment?
4. Is the 2010 assessment fair and equitable?

LEGISLATION

Interpretation Act, R.S.A. 2000, c. I-8

s.13 Definitions and other interpretation provisions in an enactment

- (a) are applicable to the whole enactment, including the section containing the definitions or interpretation provisions, except to the extent that a contrary intention appears in the enactment, and
- (b) apply to regulations made under the enactment except to the extent that a contrary intention appears in the enactment or in the regulations.

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

s.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.616 In this Part,

- (a.1) “building” includes anything constructed or placed on, in, over or under land, but does not include a highway or road or a bridge that forms part of a highway or road;
- (s) “parcel of land” means the aggregate of the one or more areas of land described in a certificate of title or described in a certificate of title by reference to a plan filed or registered in a land titles office;

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.

Cases Cited

Bramalea Ltd. v. British Columbia (Assessor of Area No.9 – Vancouver) (1991) 76 D.L.R. (4th) 53 B.C.C.A..

Municipal Government Board, A.J. No. 1042.

POSITION OF THE COMPLAINANT

The Complainant’s position is that:

1. The subject property should be assessed at a value reflecting the lower of sales of similar property and assessments of similar properties.
2. The subject lot is part of a larger parcel due to it being tied with other parcels by an improvement (a fence) and a blanket mortgage, and as such, should be assessed in comparison with similar larger parcel properties, not as an individual lot.
3. The fencing has not been depreciated fairly.
4. The Complainant requests that the assessment be reduced to \$411,000.

POSITION OF THE RESPONDENT

The Respondent’s position is that the correct and legal methods as legislated were used in assessing the subject property whereby each individual lot within the legal definition under s.1(v) of the Municipal Government Act, was assessed fairly and equitably in comparison to similar properties.

FINDINGS

The Board finds that each individual lot, legally described within a larger parcel of land can be sold without change to legal description and is therefore a separate entity for assessment purposes.

The Board finds that an improvement in the form of a fence is not a building. A building under section 1(v)(ii) MGA refers to a permanent structure. The Board considers a fence is moveable fixture, and thus, it does not tie the land together.

DECISION

The decision of the Board is to confirm the assessment of \$625,000.

REASONS FOR THE DECISION

1. The Board noted that the Complainant requested the Board apply the lower value of the comparable market sale prices and comparable equity values to the subject property in order to determine the 2010 assessment value. However, the Complainant provided an analysis only of sales and equity values for larger sized parcels for the Board to analyze for a requested lower value.
2. The Board refers to Bramalea (at para 22) which states that the taxpayer has the right to an assessment that was not higher than market value and was equitable in relation to the properties. Further, in Municipal Government Board, the court further advises that should there be a conflict between equity and market value, that an assessment should be reduced if it is greater than the market value.

The requirements imposed by these three principles may be in conflict. If they are, the conflict should be resolved. In my opinion this should be done on the basis that if an assessment is higher than market value it should be reduced.

(Municipal Government Board, para. 25)

Thus, even had the Complainant provided sufficient evidence that would have allowed the Board to analyze the comparable market sale prices and equity values for the individual lot sizes, the Complainant would only have had the right to ask the board to apply the market value had it been lower.

3. The Board notes that each lot within the legal description is a subdivided lot and individually identified by lot number and LINC number (C2, P.42-45). Each individually described lot can be sold without a change in legal description.
4. The Board is of the opinion that each individual lot in a legal description, which carries a registered blanket mortgage and is fenced in common with other lots, can be sold without change to the legal description and that the registered mortgage can be amended or removed from title without change to the legal description. The fencing can be easily moved, changed or demolished, as it is not permanently affixed to the land

5. The Board is of the opinion that the assessment has been applied correctly to the individual lots as each lot is a legal entity and has an individual market value that is established by the direct sales comparison approach to value.
6. The Board places greater weight on the Respondent's sales comparables (R1, P.17) as the TASP reflects values for similar size properties to an individual lot. The Board refers to the definition of Parcel of land in s.1 (v) Municipal Government Act.
7. The Municipal Government Act's definition of "parcel of land" contained in s.1 (v) applies to the entire act except for an opposite intention (Interpretation Act, s.13). The definition of parcel of land under s. 616 (s) of the Municipal Government Act applies only to Part 17, Planning and Development. This change in definition from s.1 (v) of the Act demonstrates an intention of the legislature to use a differentiating definition of parcel of land only in the planning phase of land development. Thus, the definition contained in s.1 (v) of the Municipal Government Act must be applied in Assessment Review Board decisions.
8. The Board cannot consider the Complainant's sales comparables (C2, P.10) as the TASP reflect values for larger properties that compare to the size of all the lots combined. The Complainant has failed to discharge his burden of proof that the assessment was incorrect, unfair and inequitable.
9. The Board noted the Respondent stated the depreciation has been applied but it is not clearly illustrated on the Replacement Cost Summary (C2, P.8) because it is a computer generated form that does not show the Replacement Cost New (RCN) only the Depreciated Replacement Cost New (DRCN), whereas the Complainant brought forward the depreciation of the fence as an issue, but failed to provide any supporting evidence as to the amount of depreciation that should be applied or the Depreciated Replacement Cost New amount.
10. The Board finds the 2010 assessment of \$625,000 to be fair and equitable.

DISSENTING DECISION AND REASONS

There are no dissenting decisions or reasons.

Dated this 22nd day of July, 2010 at the City of Edmonton, in the Province of Alberta.

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.

CC: Municipal Government Board
CC: Brandt Tractor Properties Ltd.