

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 00848

Assessment Roll Number: 9956617

Municipal Address: 4485 Gateway Boulevard

Assessment Year: 2013

Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

Larry Loven, Presiding Officer

Brian Hetherington, Board Member

Dale Doan, Board Member

Procedural Matters

[1] The parties indicated that they had no objection to the composition of the CARB. In addition, the CARB members indicated that they had no bias on this file.

Preliminary Matters

[2] At the outset of the hearing, the Complainant indicated that they had three matters which they wished to raise, which were:

- a. Does the Respondent have the authority to request an increase in the 2013 assessment?
- b. Is the reliance on post-facto information for the purposes of establishing a higher assessed value appropriate?
- c. Would a postponement of the hearing be appropriate?

[3] The Complainant stated that their document entitled, "Appellant Rebuttal and Witness Report of the Property Owner" (C-1, 189 pages) addresses only the three matters outlined in para. 2 above, and requested that it be entered into evidence in support of their position in this regard. The Respondent indicated that there was no objection to the Complainant's request.

Background

[4] The subject property is a hotel/motel known as the *Holiday Inn South*, located at 4485 Gateway Boulevard, containing 224 rooms, an *ABC Restaurant*, a *Gift Shop* and *Dalton's Restaurant*.

Issue(s)

[5] While the primary issue concerning the subject property is the requested revised assessment of \$20,289,000 from the initial 2013 assessment of \$12,188,000, the preliminary matters are as identified in paragraph 2.

Legislation

[6] **The *Municipal Government Act*, RSA 2000, c M-26, reads:**

s 1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

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.

Position of the Complainant

[7] The Complainant submitted that his Rebuttal document contained legal arguments in support of his preliminary requests.

[8] The Complainant cited the following Court of Queen's Bench of Alberta decisions concerning the issue of the Assessor's request to increase the 2013 assessed value:

- a. *Canadian Natural Resources Ltd. V. Wood Buffalo (Regional Municipality)*, 2012 ABQB 177 ("CNRL"), para. 166-167, where leave was granted in regards to an increase in the assessed value in connection with a taxpayer's appeal.
- b. *Edmonton East (Capilano) Shopping Centres Limited (AEC International Inc.) v. Edmonton (City)*, 2012 ABQB 445 ("Capilano"), para. 52-63, where leave to appeal was given regarding the role of the City, as a *de facto* appellant or applicant, in proceedings before the CARB.
- c. *Agro Grain Management Services Ltd. V. Lacombe (County of)*, 2006 ABQB 351 (Ag Pro"), cited in *Capilano*, above, where *Ag Pro* may suggest otherwise.

[9] Based on the decisions cited above, the Complainant submitted the Respondent does not have the authority to request an increase, nor can the Respondent become the “*de facto* appellant” in this appeal of the 2013 assessment of the subject property.

[10] In the alternative, the Complainant requested that the hearing be postponed pending a decision on *Capilano*, noting the leave to appeal was granted on the issue of the Assessor’s request to increase, and no decision on the merits has been issued. The Complainant cited *Edmonton (City) v. Edmonton (Assessment Review Board)*, 2012 ABQB 445, paras. 17, 18 and 27 where the ARB’s decision regarding an adjournment involves “*a principal of natural justice*” and “*procedural fairness*”. Based on this decision, the Complainant submitted that the principles of procedural justice mandate a postponement in this appeal of the 2013 assessment of the subject property. Further, the Complainant submits that the Respondent’s request for an increase, to the 2013 assessment of the subject property be denied, stating it is fundamental to the “*right to answer where one’s rights are affected*”.

[11] To further support the Complainant’s request for postponement, the Complainant referenced two CARB decisions, 0098 609/11 and 0098 80/11, citing “*exceptional circumstances*” would apply to this appeal of the 2013 assessment of the subject property, even though the two CARB decisions cited were the subject of applications to court.

[12] Regarding the issue of the use of *post facto* information to seek an increase in value, the Complainant claimed that the Respondent relied solely upon the 2013 Request for Information (“RFI”) to establish a revised and higher assessed value. The Complainant informed the CARB that this information had been provided, in accordance with Respondent’s RFI, for the expressed purpose of preparing the 2014 assessment and not to amend the current assessment. The Complainant argued that this *post facto* increase request was inappropriate, and inconsistent with not only the Respondent’s own stated methodology but previous CARB decisions. The Respondent quoted from the *City of Edmonton 2013 Property Assessment Law and Legislation* manual as follows, “*The Board may consider such post facto evidence to confirm market trends, however such post facto evidence cannot be used in setting value,*” referencing MGB orders 209/98, 213/98 and 073/04. The Complainant also included CARB decisions 2446/2011-P, 0098 4912 and 115/09 in further support of this argument.

[13] The Complainant pointed out to the CARB that there had been no change to the physical characteristics of the subject and requested the CARB to “strike the evidence” related to the owner’s reply, dated April 10 2013, to the City’s request for information relating to the preparation of the 2014 assessments.

[14] In conclusion, the Complainant submitted to the CARB that the request for an increase over the original assessment of \$12,188,000 was invalid; that the request for 2014 projected data be stricken; that the methodology used by the City of Edmonton to increase the assessment after providing the original assessment was contrary to regulations; and that the hearing be postponed until Court of Queen’s Bench decisions are rendered on the three appeals.

Position of the Respondent

[15] Responding to the Complainant’s submission on the use of *post facto* information, the Respondent informed the CARB that the request to increase the assessment was based on information that had been received by the City on the performance of the subject property and had nothing to do with the information provided by the Complainant in March, 2013.

[16] The Respondent's legal counsel suggested to the CARB that the **Capilano** and **CNRL** actions referred to by the Complainant were limited to approvals of a leave to appeal and that no final decisions on these appeals had been made, and that it would be inappropriate to delay this appeal pending those decisions, which might not be made for many months.

[17] The Respondent suggested to the CARB that the *Municipal Government Act* allows a Municipality to make changes to an assessment. The Board subsequently reviewed the Act and found that Section 312 "Correction of notice" states:

"If it is discovered that there is an error, omission or misdescription in any of the information shown on an assessment notice, an amended assessment notice may be prepared and sent to the assessed person."

[17] The Respondent informed the CARB that the Respondent, after reviewing information that had not been considered in the original assessment, sent a letter to the Complainant regarding the request to increase the assessment on June 26th, 2013. A copy of this letter was not made available to the CARB, and the Complainant stated that no such letter was received.

Decision

[20] The CARB revises the assessment from the original amount of \$12,188,000 (requested revision to \$20,289,000) to \$12,058,000.

Reasons for the Decision


[21] The Respondent informed the CARB that corrections to the 2013 assessment of the subject property resulted in a revised value of \$12,058,000 from the requested \$20,289,000 and assessed \$12,188,000. The Respondent requested the CARB accept this revised value of \$12,058,000.

[22] The Complainant affirmed acceptance of the revised assessment and requested the CARB accept the assessment as revised by the Respondent for \$12,058,000.

[23] The CARB found no reason to not accept the revised assessment of \$12,058,000 as requested by the Respondent and agreed to by the Complainant.

Heard on July 10, 2013.

Dated this 29th day of July, 2013, at the City of Edmonton, Alberta.


Larry Loven, Presiding Officer

Appearances:

John Trelford

Kerry Reimer

for the Complainant

Abdi Abubakar

Steve Lutes

for the Respondent

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, RSA 2000, c M-26.