

## **Edmonton Composite Assessment Review Board**

**Citation: Altus Group v The City of Edmonton, ECARB 2012-000911**

**Assessment Roll Number:** 7098197

**Municipal Address:** 10618 81 AVENUE NW

**Assessment Year:** 2012

**Assessment Type:** Annual New

Between:

**Altus Group**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**  
**John Noonan, Presiding Officer**  
**Jasbeer Singh, Board Member**  
**John Braim, Board Member**

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### **Preliminary Matters**

[1] When asked by the Presiding Officer, the parties indicated no objection to the composition of the Board. The Board members indicated they had no bias in the matter before them. The parties providing evidence were sworn in.

[2] The Complainant, Altus Group Ltd., filed ten complaints in respect of vacant lots that were rezoned from original RA7 (Low-Rise Apartment zone) to DC (Site Specific Direct Control) with an effective zoning of CB1 or CB2, on behalf of various taxpayers. The common issue for all ten properties under complaint is whether the subject assessments should be based on the effective commercial zoning (CB1 or CB2) or the historic low-rise apartment residential zoning (RA7). The improvement assessments for pavement, if applicable, are not at issue.

[3] The Complainant and the Respondent requested the Board to hear all of the complaints and carry forward the evidence and argument from the first hearing to the rest of the hearings before the Board. However, each complaint is to be heard separately and sequentially. The Board agreed with the request and heard the complaints on September 17, 2012. A separate decision will be rendered for each of the complaints.

[4] Evidence, argument and submissions will be carried forward from this file to roll numbers 7098213, 7098239, 7136807, 7136906, 7137003, 7137102, 7137201, 9954962 and 9954963, where applicable.

## **Background**

[5] The subject property comprises a fully serviced 5,414 sq ft parcel of land located on an interior lot on 81 Avenue in the Queen Alexandra neighbourhood and is zoned DC2 (Site Specific Development Control) with an effective zoning of CB1 (Low Intensity Business District). The land forms part of an automotive dealership and as such is exclusively utilized to park cars scheduled for servicing. The 2012 assessment of \$253,000 was prepared by the cost approach and includes \$5,969 of depreciated value attributable to paving. The minor improvement value is not in dispute. The land has been assessed at \$45.68/sq ft for a total of \$247,297. This value is under complaint.

[6] The subject property was originally zoned RA7 (Low Rise Apartment Zone) and acquired site-specific direct control zoning (DC2. 443) in 1997. This zoning restricts development of the property and specifies use as accessory parking exclusively for the nearby auto dealership. For assessment purposes, the City assigns an effective zoning of CB1 (Low Intensity Business Zone).

## **Issue(s)**

[7] The complaint form specified a schedule of eleven issues. At the hearing the Board heard evidence and argument on the following:

- a) Should the subject assessment be based on its effective commercial zoning (CB1) or the historical low rise apartment residential zoning (RA7)?
- b) Is the resulting assessment of the subject property equitable with similar properties?

## **Legislation**

[8] The Municipal Government Act reads:

### ***Municipal Government Act, RSA 2000, c M-26***

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**

[9] The Complainant filed this complaint on the basis that the 2012 assessment of the subject property exceeded its market value. In particular, the Complainant stated that the subject property had been assessed on an incorrect basis: the assessor had applied an effective zoning of CB1 and the concomitant higher commercial land rate. Instead, the subject should be effectively zoned RA7 and the lower “vacant residential” rate applied. The land was originally zoned RA7 and would revert to that zoning if it were purchased independently from the dealership and redeveloped, as the adjoining properties were RA7. As such, the property should be valued at the same rate as other RA7 zoned properties.

[10] The current use of the site is limited as it can only be used as a paved parking lot in connection with an auto dealership. The DC2 zoning is site specific to the subject and adjoining lots. Given the current use of the subject, the land should be assessed as RA7 (vacant residential) but a commercial mill rate ought to be applied.

[11] The Complainant provided the Board with a chart of five assessment comparables, all zoned RA7 and all located in the Queen Alexandra subdivision, to demonstrate that the subject parcel had been assessed inequitably. The comparables were all located close to Whyte Avenue and were assessed at unit rates ranging from \$40.70/ sq ft to \$40.74/ sq ft. These equity comparables were the basis for the requested assessment. Using a rate of \$40.75/ sq. ft. would produce a land value of \$220,632. Adding the improvement value of \$5,959 would yield \$226,500 (rounded) compared to the current assessment of \$253,000.

[12] In response to questions, the Complainant stated that the property would revert to RA7 zoning if sold independent of the commercial property to which it is “accessory”, based on an understanding of a 2006 discussion between the agent’s representative and the assessment department.

[13] Complainant agreed that as at condition date (December 2011) the site could not be used for any of the uses under the RA7 permitted uses.

[14] In rebuttal the Complainant stated that the subject property had severe development restrictions and was restricted exclusively to accessory parking for the auto dealership to the north of it. The equity and sales comparables provided by the Respondent were all commercially zoned and had virtually no development restrictions. As such the Respondent’s comparables were not comparable to the subject property.

### **Position of the Respondent**

[15] At the conclusion of the Complainant’s testimony and as a precursor to their own testimony, the Respondent stated that in their opinion the Complainant had not met their evidentiary onus with respect to the subject complaint. The Respondent observed that the complaint was not about valuation per se. Rather, the requested assessment was based on treatment of the subject as similar to RA7 land. However, the property was not similar to RA7, was not being used for an RA7 permitted use and there was no provision in the legislation for the property to revert to its previous zoning. Application would be required to change zoning to RA7, CB1, or a different DC. Effective zoning is not part of the bylaw but is used internally to create classes of similar properties where the actual zoning is different. For the majority of properties, effective zoning reflects use. Similarly zoned properties were assessed similarly.

[16] In the Respondent's view the Complainant's evidence was focused entirely on assessment treatment equitable with RA7 properties. However, the subject was a commercial property and assessed as such. The Respondent applied to the Board to consider whether onus had been met.

[17] The Board considered the onus question, deferred a decision on the application, and in the interest of having the benefit of all the evidence, the hearing continued.

[18] In support of the assessment the Respondent's brief included a chart of two equity comparables and two sale comparables, all effectively zoned CB2 or CNC, which is similar (R-1, page 11). The equity comparables were both located on 81 Avenue, one block east of the subject parcel and had an average assessment of \$46.45 per square foot. The two sales comparables were also similar in unit rates and provided an average rate of \$46.62 per square foot, one being located on 81 Avenue and the other on 76 Avenue. In the Respondent's opinion, both rates support the current assessment.

[19] The Respondent stated that the subject property's effective zoning was CB1, which allows for commercial parking. The RA7 zoning does not permit commercial parking and the Respondent advised that the subject property had been rezoned to DC2 at the owner's request to accommodate the subject's use for parking.

[20] The Respondent also provided a map showing the location of the Complainant's comparables to demonstrate that they were located in residential areas and therefore, of less value than the subject that was located in an area transitioning to commercial.

[21] The Respondent provided a surrebuttal to demonstrate that the DC2 zoning of the site clearly indicates that the zone was established to create an "accessory parking lot" for vehicles being serviced at the main dealership. In this context accessory means "exclusively devoted to the principal use or building". They also stated that "not only is the property associated with a CB zoned commercial operation, it directly abuts various other CB2 zoned properties".

## **Decision**

[22] The Board confirms the 2012 assessment of \$253,000.

## **Reasons for the Decision**

[23] The most relevant and persuasive argument put to the Board came from the Respondent: the subject property cannot be used as RA7 land. The fact that the subject was once zoned RA7 and such zoned land is in close proximity to the subject has no bearing. The current use and zoning cannot be ignored.

[24] The Complainant has a point in that the sales and equity comparables advanced by the Respondent differ from the subject. They do not carry the development restrictions that burden the subject. The comparability of those properties does not address the principal issue. The subject property and nine other similar lots must be used in conjunction with a commercial property nearby. The Complainant partially recognizes current use with the suggestion that a

commercial mill rate should be applied, but to a residential effective zoning and assessment. This idea strikes the Board as an awkward construct that likely exceeds the jurisdiction of the Board.

[25] The Board heard nothing to suggest the current use of the subject is expected or planned to change in the future. At some future date, a change might be contemplated but the Board accepts the Respondent's explanation that a zoning application would be required. Meanwhile the subject operates in conjunction with, or accessory to a commercial enterprise and the Board believes it is assessed on the correct basis.

[26] In retrospect, onus was not met. Nevertheless, the Board welcomed the opportunity of hearing both parties in deciding this matter.

[27] With regard to the issue of the assessment being equitable, the Board finds that this became moot as the issue of the effective zoning became paramount to this issue.

Heard September 17, 2012

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Dated this 11<sup>th</sup> day of October, 2012, at the City of Edmonton, Alberta.

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John Noonan, Presiding Officer

**Appearances:**

Bret Flesher

Chris Buchanan

for the Complainant

Cameron Ashmore

Meghan Richardson

for the Respondent