



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION NO. 0098 172/10

Altus Group Ltd
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 26, 2010, respecting a complaint for:

Roll Number 7097199	Municipal Address 8110 104 STREET NW	Legal Description Plan: I Block: 62 Lot: 2/3
Assessed Value \$559,000	Assessment Type Annual New	Assessment Notice For: 2010

Before:

Board Officer: Kyle MacLeod

Hatem Naboulsi, Presiding Officer
Tom Eapen, Board Member
John Braim, Board Member

Persons Appearing: Complainant
John Trelford, Director, Altus Group

Persons Appearing: Respondent
Chris Rumsey, Assessor, City of Edmonton
Tanya Smith, Barrister & Solicitor, City of Edmonton

PRELIMINARY MATTERS

1. The Complainant objected to the Respondent's evidence package (R1) noting no summary was provided, and was therefore too open-ended to adequately prepare a rebuttal.

The Board reviewed the request regarding s.8(2)(b)(i) of the Matters Relating to Assessment Complaints Regulation (MRAC) and ruled that that Respondent can submit their evidence but neither party can enter any information not provided in the disclosure package. The Complainant may object if the Respondent presents evidence outside of their disclosure. No further objections were raised on this matter.

2. Upon commencement of the hearing the Respondent objected to the admissibility of the Complainant's rebuttal document (C-2), which contained the 2010 assessment of the sales comparables presented by the Respondent, as well as the assessment per square foot and the Assessment to Sales Ratio (ASR). The Respondent objected in particular to the submission of the ASR as it had not been an issue on the original complaint form. The Board ruled that the Complainant's rebuttal document was admissible as it was exchanged properly, in a timely fashion, and related to an issue that was stated on the complaint form.

BACKGROUND

The subject property is located at 8110 104th Street and is operated by Impark and utilized as a parking lot. The property is 9,213 sq. ft. and is categorized as a commercial vacant lot. The subject property is assessed at \$60.68 /sq. ft. for a total value of \$559,000. The 2010 assessment was derived using the direct sales comparison approach.

ISSUES

1. Is the subject property fairly and accurately assessed as compared with similar properties in the area?
2. Is the value of the subject property captured by the assessment of the adjoining Army and Navy property?

LEGISLATION & LEGAL DECISIONS

Matters Relating to Assessment Complaints Regulation, Alberta Regulation 310/2009

- s.8(2)(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

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

- s.289 (2) Each assessment must reflect
- (b) the valuation and other standards set out in the regulations for that property.
- s.293 (1) In preparing an assessment, the assessor must, in a fair and equitable manner,
- (a) apply the valuation and other standards set out in the regulations, and
 - (b) follow the procedures set out in the regulations.
- 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.

Bramalea Ltd. v. British Columbia (1990), 76 D.L.R. (4d) 53. [*Bramalea*]
697604 Alberta Ltd. v. Calgary (City), 2005 ABQB 512 [*697604 Alberta Ltd.*]

POSITION OF THE COMPLAINANT

The Complainant submitted five sales comparables dated from March 2006 to February 2010 ranging from \$25.01/ sq. ft. to \$68.71/ sq. ft. with an average of \$44.35/ sq. ft. (C-1, pg. 10). The Complainant argued the best sales comparables are number 1 and 3 with an average of \$49.09/ sq. ft.

The Complainant submits that based on current legal decisions (e.g. *Bramlea*) the subject is entitled to the lower of the market value or the assessment equity, which in this case is \$452,000.

The Army & Navy store is a department store with almost 100% site coverage and the subject property provides parking facilities for that store. The effective site coverage of the Army & Navy store, including the subject property, is below 50% and is in line with other commercial facilities (C-1 pp. 30-52). The Complainant submits the rental rate for Army & Navy captures the value of the subject property therefore the assessment of the subject property should be reduced to a nominal value of \$500.

POSITION OF THE RESPONDENT

The Respondent submitted five sales comparables (R1, p. 15) dated from December 2006 to April 2010 with time adjusted sale prices ranging from \$57.82/ sq. ft. to \$114.54/ sq. ft. with an average of \$92.23/ sq. ft. The Respondent indicated that the sale of the property at 10201 82nd Avenue is the best comparable to the subject, as it is a comparable utilized by both parties, and it is time adjusted to \$52.21/ sq. ft.

The Respondent indicated there should be a value for the subject property and the \$500 suggested by the Complainant cannot reflect market value.

The Respondent suggests *Bramalea* represented the proposition that the assessed party could elect the lower of equity or sales comparables only where equity was the only issue and if the assessment did not fall within the range of values.

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."

DECISION

The decision of the Board is to reduce the 2010 assessment of the subject property from \$559,000 to \$470,000.

REASONS FOR THE DECISION

The Board was persuaded by the Complainant's two sales (sales number 1 and number 2, C-1, page 10,) due to their close proximity to the subject. The sale comparables were time adjusted to \$49.83/ sq. ft. and \$52.21/ sq. ft. with an average of \$51.02/ sq. ft. Furthermore they were supported by the trend of sale 3, which although post-facto, also supported a reduction.

The Board found that the sale of 10201 82nd Avenue N.W., at \$52.21/ sq. ft. was common to both parties. In addition the Board was persuaded by the Complainant's rebuttal (C-2) which contained a common comparable at \$54.33/ sq. ft. that also supported a reduction in the subject property's assessment.

Three of the Complainant's and one of the Respondent's sales comparables were post facto (after the July 1, 2009 valuation date). The Board accepts that, in general, a post facto sale should only be used to establish trends in the marketplace. However, a post facto sale could be used to assist in establishing value trends if evidence were provided that the parties to the sale agreed to the purchase price prior to the valuation date.

The Board was satisfied that the assessor complied fully with the requirements of the s.293 of the Municipal Government Act.

The Board disagreed with the Complainant that the rental rate applied to the Army & Navy property captured the value of the subject property. The Complainant brought no evidence supporting the argument and in fact did not even present evidence that both properties were owned by the same taxpayer.

The Board also recognizes and accepts that the Army & Navy department store has an atypical site coverage (C-1, pp. 30-52) and that the use of the parking lot (subject property) is an integral part of the Army & Navy department store. However s.289 of the requires the assessor to prepare a market value assessment for each property, and there is nothing to indicate the assessor acted improperly in preparing an independent assessment for the subject.

The legal decision *Bramalea* articulates that where the assessment standard is market value, a taxpayer is entitled to either market value or a value that is fair and equitable in relation to similar properties, whichever is lower. It is a long established principle of assessment that a taxpayer has the right to an assessment not in excess of actual value, and to an assessment that is comparable with similar properties in the municipality.

The Board can only deal with the complaint before it. Accordingly, in order to preserve the taxpayer's right to equity and accuracy with similar properties, the subject assessment is lowered to the same rate as the comparables used by both properties.

Dated this 2nd day of September, 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: Army & Navy Department Store Limited
Municipal Government Board