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ASSESSMENT REVIEW BOARD

NOTICE OF DECISION NO. 0098 207/10

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 from hearings held on August 16-17, 2010 respecting annual new 2010 assessment complaints for:

Roll Number	Municipal Address	Legal Description Plan	Block	Lot(s)	Assessed Value ($)
9993464	6450 184 St. NW	7721450	39	41	12,094,500
1816156	**8905 184 St. NW**	**7521612**	**17**	**2**	**10,352,500**
9969608	9003 184 St. NW	7521612	17	4	8,608,000
9993463	206, 17104 75 Ave. NW	7822158	4	62	11,277,500
9993443	7611 172 St. NW	7822158	4	60	11,268,000
9993444	17103 69 Ave. NW	4941RS	11	2	19,422,000
9993467	17720 81 Ave. NW	1012TR	12	3	25,208,000
7949019	5010 Riverbend Rd. NW	5452RS	35	C	15,764,500
9994641	11512 40 Ave. NW	0220628	42	5A	9,216,000
3409224	10250 115 St. NW	B3	15	124, etc.	5,104,000
3050754	10620 102 St. NW	B3	2	256, etc.	3,540,000
3204658	10716 107 St. NW	B4	7	194, etc.	3,541,000
3289550	10605 112 St. NW	B4	11	171, etc.	3,673,000
9994238	10750 29 Ave. NW	7921043	20	3	4,811,000
9994244	11003 29A Ave. NW	7921043	32	1	21,575,000
9994243	2911 109 St. NW	7921043	33		18,406,000
9947281	10510 38 Ave. NW	4082RS	9	B	36,080,000
6213359	11819 106 St. NW	RN52	5	3, etc.	4,401,500
9974153	400, 5011 140 Ave. NW	9926068	55	1A	11,276,000
9974154	5021 140 Ave. NW	9926068	55	2A	9,353,500
9485921	3803 55 St. NW	7721465	14	41	4,816,000
9994246	4505 137 Ave. NW	7621178	19	10A	20,275,000
9993446	24, 11915 34 St. NW	5624RS	11	4	26,972,000

Before:

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

Board Officer:

J. Halicki

Persons Appearing: Complainant

From Altus Group Ltd., as agents:

Josh Weber, Director
John Maslen, Director

Others present:

Robert Brazzell, Sr. Director
Chris Buchanan, Sr. Consultant
Stephen Cook, Director

Persons Appearing: Respondent

For the City of Edmonton:

Devon Chew, Assessor
Rebecca Ratti, Solicitor
Guo He, Assessor

Others present:

Tanya Smith, Solicitor
Bozena Andersen, Sr. Assessor
Andy Lok, Assessor

PROCEDURAL MATTERS

The Board had those individuals providing testimony either sworn or affirmed.

The parties indicated no objection to the composition of the Board and the Board Members expressed no bias with respect to this file.

At the commencement of the hearing, roll number 1816156 was selected as the pilot file and the arguments and evidence related thereto were carried forward to the other roll numbers/accounts before the Board as listed on pages 1 and 8 of this decision.

PRELIMINARY MATTERS

During the hearing, Mr. Weber, an employee of Altus Group Ltd. and representing the Complainant, requested that his fellow employee, Mr. Maslen, explain to the Board how Altus Group Ltd. derived their approach to test the theory that resulted in 100% assessment-to-sales ratios on the three sales comparables presented.

The Respondent's counsel objected to Mr. Maslen speaking as a primary witness and noted that he was not among those persons listed on page 13 of exhibit C2 although he is noted in a will say statement as an expert witness.

Initially, the Board ruled that Mr. Maslen could provide evidence later in the hearing as a witness. On behalf of the Complainant, Mr. Brazzell, a lawyer by profession, but, acting in the capacity as a tax consultant, addressed the issue of Mr. Maslen's speaking as an employee of Altus Group Ltd. Counsel for the Respondent reiterated the objection and asserted that the Complainant was trying to "split" the case by having Mr. Maslen speak.

The Board reversed its initial ruling and agreed to Mr. Maslen speaking to the theory in the approach used by Altus Group Ltd. The Board ruled that Mr. Weber and Mr. Maslen would both provide evidence, subject to cross-examination.

After Mr. Weber concluded his presentation and prior to his being subjected to cross-examination, the Respondent's counsel objected to not knowing what Mr. Maslen's testimony would be. Mr. Maslen, when asked by the Presiding Officer, volunteered that he would speak to GIM, selection of comparables, and equity.

The Respondent requested that the Board order that Mr. Maslen refrain from discussing the case during lunch hour and further that he be excluded from the room during the cross-examination of Mr. Weber. The Board concurred in so far that it asked Mr. Maslen to refrain from discussion, but did not exclude him from being present in the hearing room during cross-examination of Mr. Weber by the Respondent's legal counsel.

BACKGROUND

The subject property, located in the Belmead neighbourhood and known as West Edmonton Court, is a four-storey (low rise), multi-residential walk-up apartment consisting of 81 suites (multi-mix) with an effective year built of 1977.

THEORETICAL CONSIDERATIONS

The Complainant and Respondent provided background information on theory of appraisal, assessment, and mass appraisal. Relevant extracts are detailed below and were carefully considered by the Board with respect to methodology presented. These are from *The Appraisal of Real Estate (*C1, pgs. 2-3*); Mass Appraisal of Real Property* (IAAO) *(*R2, pgs. 12-18*); The Alberta Assessors' Association Multi-Residential Valuation Guide – September 1998 (*C1, pgs. 84-125*),*and *Basics of Real Estate Appraising* (Third Edition) *(*R1, pgs.36-37*).*

From *The Appraisal of Real Estate* - Gross Income Multiplier(s) (GIM):

> To derive a gross income multiplier from market data, sales of properties that were rented at the time of sale or anticipated to be rented within a short time must be available. The ratio of the sale price to the annual gross income *at the time of sale* or projected over the first year or several years of ownership is the gross income multiplier.
>
> After the gross income multiplier is derived from comparable market data, it must be applied on the same basis it was derived. In other words, an income multiplier based on effective gross income can only be applied to the effective gross income of the subject property; an income multiplier based on potential gross income can only be applied to the potential gross income of the subject property. The timing of income must also be comparable. (C1, pg. 2).

From the *Mass Appraisal of Real Property* Chapter 4 *Mass Appraisal Model Calibration* - Gross Income Multipliers and Overall Rates:

<u>Stratification</u>

> In the first, stratification, sales are grouped by factors that tend to affect the relationship between income and value. From a theoretical viewpoint, four major factors affect the relationship between current net income and market value: the discount rate or required rate of return on investment…the expected rate of change in net income; and the percentage of income attributable to land…expense ratios should also be considered because properties with lower expense ratios will usually command higher *GIMs*. Differences in these four theoretical factors vary primarily with the type of property, location, and condition. The first step, then, is to stratify sales based on these criteria…*GIMs* can then be computed and analyzed by strata…In practice, the median would be a good choice for the measure of central tendency because it is not overly influenced by extremes…The appraiser can, therefore, apply the results with reasonable confidence despite the small sample size within strata.
>
> The success of this technique depends on the availability of adequate sales data. Older sales can be used in the analysis by adjusting both income and sales prices to the appraisal date as necessary. However, *neither* needs to be time-adjusted if income and sales data reflect the same time, which would be the case if income data were captured or updated at the time of sale.

<u>Multiple Regression Analysis (MRA)</u>

> MRA…can be developed that use the same variables used in stratification: type of property, location, effective age or condition, size, and so forth. Once developed, the models can be used to estimate income multipliers or *OARs* for unsold properties, so that a unique figure is developed for each property based on its specific characteristics. Where properties are heterogeneous this can produce a more supportable result than use of a single figure for an entire stratum of properties. In addition, MRA makes more efficient use of sales data…This permits the appraiser to test more variables in the models, which is particularly helpful when *GIMs* are being developed.
>
> …*GIMs* have the practical advantage of not requiring expense data, which are difficult to collect and analyze. (R2, pgs. 15-18)

From the *Alberta Assessors' Association Multi-Residential Valuation Guide – September 1998:*

> The methods presented in this valuation guide are aimed at deriving values for different classes of multi-residential facilities.

<u>Income Approach</u>

> …Rental information is generally available for all types of apartment properties, however, and especially for smaller properties, Income and Expense Statements and other financial information may be more difficult to obtain. The rental information that is typically available for other less complex and smaller types of apartment buildings indicates that a gross income multiplier should generally be used.
>
> Gross Income Multiplier (GIM) formula

Market Value = Gross Annual Income x Gross Income Multiplier

A GIM is developed through the analysis of sales of similar properties and relates market value evidence to the gross income produced by those properties.

As a general rule the higher the similarity and the more robust the sales data, the more accurate the result of a GIM valuation procedure.

<u>Estimate Typical Gross Income</u>

Along with the actual gross income, it will be necessary for the assessor to determine typical gross income…for that class of multi-residential property. Typical rents are established through the analysis of all the information collected on the properties contained within a class.

<u>Estimate Effective Gross Income</u>

Applying the long-term vacancy and collection loss allowance to the expected gross income produces the normalized effective gross income for the subject property. The long-term vacancy rate should be established by analysis of actual reported vacancy rates or rates as tabulated by various government bodies such as CMHC.

(C1, pgs. 84-125)

From the *Basics of Real Estate Appraising* (Third Edition)*:*

<u>Motivation</u>

The motivations of both buyers and sellers must be investigated to see if there was any undue pressure or reason for the sale of the property. Was the vendor motivated to sell quickly because the cash was needed, or because of a divorce, or a non-arm's-length transaction, or any other unusual circumstance. If special conditions are found, discard the sale; however, if it must be used, talk to the parties involved or the salesperson to find out more about the circumstances, so that the sale can be adjusted properly. Any adjustments made for motivation must be well supported.

<u>Market conditions</u>

Since the date of the appraisal is a specific date, one must consider if the market has changed over time…Market conditions can change due to inflation, deflation, and fluctuations or changes in the supply and demand of properties in that particular market…Market conditions, not time itself, create the need for an adjustment.

(R1, pg. 37)

ISSUES

1. Is the subject property assessed in contravention of section 293 of the *Municipal Government* Act and of *Matters Relating to Assessment and Taxation Regulation* 220/2004?

2. Is the use, quality, and physical condition attributed by the municipality (Respondent) to the subject property correct and in accordance with section 289(2) of the *Municipal Government Act*?

3. Should the assessed value be reduced to the lower of market value or equitable value?

4. Is the assessment of the subject property in excess of its market value for assessment purposes?

5. Is the assessment of the subject property fair and equitable considering the assessed value and assessment classification of comparable properties?

6. Should the gross income multiplier (GIM) be decreased to reflect market conditions at the valuation date?

7. Has the correct valuation methodology been applied by the Respondent when determining the assessed value?

LEGISLATION

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

s. 289(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(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.

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

(3) An assessor appointed by a municipality must, in accordance with the regulations, provide the Minister with information that the Minister requires about property in that municipality.

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.

***Matters Relating to Assessment and Taxation Regulation* 220/2004**

s. 2 An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

s. 6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

POSITION OF THE COMPLAINANT

The position of the Complainant is that the GIM is the correct method of estimating the market value of the subject property for assessment purposes. The Complainant further argues that a single GIM should be used in the assessment of similar type of properties within a municipality, in this case, walk-up apartments.

The Complainant presented three sales comparables to produce a GIM of 8.89153 (C1, pg. 7), which was applied to the subject property to support a lower assessment.

The Complainant also presented an equity analysis of 177 properties (C1, pgs. 32-33) exhibiting a range of GIM values from 9.222 to 12.204. Based on equity, the Complainant requested a lower GIM of 9.222 to be applied to the subject.

In support of the argument for a lower assessment, the Complainant produced a graph of GIM's supplied by *The Network* data indicating a downward trend of GIM's from August 2007 to October 2009 (C1, pg.9).

The Complainant argued that the GIM used by the Respondent is too high and the value produced from it does not support market value as at July 1, 2009 (C1, pg. 153).

POSITION OF THE RESPONDENT

The Respondent argued that the subject's Gross Income Multiplier (GIM) is correct as it was derived in the Mass Appraisal process through Multiple Regression Analysis Model (R1, pg. 73).

The Respondent further argued that this methodology is consistent with Provincial Quality Standards as set out in *Matters Relating to Assessment and Taxation Regulation 220/2004*.

In support of the assessment of the subject property the Respondent provided seven sales comparables (R4, pg. 2; R1, pgs. 29-35). The dates of sale ranged from February 2008 to June 2009. The Respondent argued that the assessed value per suite of the subject was within the range of the sale price per suite of these comparables.

In addition, the Respondent provided four equity comparables located in the same market area as the subject property. These comparables exhibited similar age, condition and other characteristics as the subject property (R4, pg. 1).

DECISION

The decision of the Board is to confirm the 2010 assessment for the subject property and for the properties with the following roll numbers:

9993464	9994641	9947281	9993443	3289550	9485921	7949019	9994243
1816156	3409224	6213359	9993444	9994238	9994246	3204658	9974154
9969608	3050754	9974153	9993467	9994244	9993446	9993463	

With respect to roll number 9993446, there is a commercial component to the property which was not an issue and the assessment for the commercial component has been agreed to by the Complainant.

REASONS FOR THE DECISION

The Board thoroughly reviewed both the Complainant's (exhibits C1 and C2) and the Respondent's evidence (exhibits R1 to R5).

The Board carefully reviewed the theory and text references in both the Respondent's and Complainant's evidence and noted the excerpts were from *The Appraisal of Real Estate (*C1, pgs. 2-3*); Mass Appraisal of Real Property* (IAAO) *(*R2, pgs. 12-18*); The Alberta Assessors' Association Multi-Residential Valuation Guide – September 1998 (*C1, pgs. 84-125*),*and *Basics of Real Estate Appraising* (Third Edition) *(*R1, pgs.36-37*).*

More specifically, the Board considered *Mass Appraisal of Real Property* Chapter 4 - *Mass Appraisal Model Calibration* in order to understand the mass appraisal models available to a municipality. They are the stratification model and the MRA model. The City of Edmonton developed a model using the MRA technique. MRA can be developed using the same variables as in stratification: type of property, location, effective age or condition, size, etc. The stratification model is the selection of data in a narrow range of comparability to the subject property. A median value is selected and the result is a single figure for an entire stratum of properties. The MRA makes use of the same data specifications and variables as the stratification, but these are analyzed within the MRA and the result is "…a unique figure is developed for each property based on its specific characteristics." (R2, pg. 17). Therefore, the Board recognizes that the Respondent, the City of Edmonton, appropriately uses the MRA model for mass appraisal purposes within its municipal boundaries. By doing this, it is following the *The Alberta Assessors' Association Multi-Residential Valuation Guide* (C1, pg. 84).

Both the Complainant and the Respondent selected the Income Approach as the most appropriate method of valuation and specifically selected the GIM to measure comparability. The GIM is developed through the analysis of sales of similar properties and relates market value to gross income produced by those properties. Typical rents and typical vacancies are established through the analysis of information collected in a class of properties and are applied to reach an effective gross income in the formula as follows: Typical Gross Income – Long-term Vacancy Rate = Effective Gross Income. The Respondent established an effective gross income using typical rent and typical vacancy factors which the Complainant agreed with and accepted.

The Complainant submitted three sales comparables of walk-up properties (C1, pg. 7) indicating that the sales dates were close to the valuation date. However, sales #1 and #2 are after the valuation date of July 1, 2009, as they are respectively dated September and August 2009. The Respondent indicated they could not use these sales comparables in the assessment process as they are mandated by law to use those sales prior to the valuation date. The Complainant suggested because these sales were close to the valuation date that time adjustments were not required. The Complainant argued that the assessment for sale #1 is in excess of its market value and when dividing the Respondent's effective gross income of $753,526 into the sale price of $6,700,000, the result was a GIM of 8.89153. This GIM is lower than the Respondent's assessment GIM of 11.08013. Using this procedure for the other two sales comparables also resulted in different GIM's than the Respondent's (C1, pg. 7).

The Board accepts the procedure of selecting a median value, although the sample of three is small, as it is an accepted mass appraisal stratification model. The Board considered the three sales comparables (C1, pg. 7) to measure the comparability to the subject property. It was noted sale #3 was a common sale used by both parties. Sale #2 was questioned by the Respondent as an inferior location and it is located on a major artery (109 St.). Sale #1 was questioned by the Respondent as a newer property (2002 year built compared to the subject, 1977 year built) and indicated it was a motivated sale. The Respondent included both *the Network* and *Anderson Data Online* sheets (R3, pgs. 16-17). Both data sheets showed the same specifics for the sale; however the *Anderson* report indicated it was not only a motivated sale, but also had the benefit of attractive financing terms. The Board questions whether sufficient due diligence was applied by the Complainant in selecting and relying on this sale as the basis for a requested reduction in assessment.

The Board considered the Altus Direct Sale Approach request analysis spreadsheet (C1, pgs. 29-30) and questioned where it was indicated in appraisal theory or text, provided in evidence by either party, the support for this procedure using NOI ratios to determine value. The Board noted the Complainant's supporting evidence to rely on the validity of this theory are the six pages of an unidentified and incomplete appraisal which does not explain the reason for its use nor the weight that was given to it in the appraisal (C1, pg. 146-151). It was also noted by the Board that one page from a separate, identified author of an incomplete appraisal stated this theory was "a check against the Income Approach value estimate conclusion" (C1, pg. 152). The Board further noted there was a vast range in the adjustment factors, from .53 to 1.20, which was applied to sales prices per suite to ultimately bring the sales prices in closer range to each other.

The Board concludes that the Complainant's use of a small sample of three comparable sales (C1, pg. 7) to generate a GIM and value by developing a ratio represents a mixing of the Income and Direct Sales Comparison approaches. For these reasons, the ratio is given little weight by the Board in establishing assessment value for the subject property.

The Board has noted all the theory and text quotes provided in the evidence by both parties that says numerous and similar sales are required to collect data for the Income Approach and GIM. The Board accepts the median value, in principle, but notes it is taken from a small sample of three sales. The Board further notes the median GIM of 8.89153, selected by the Complainant, is the basis for the requested reduction in assessment. The Board finds the validity of sale #1 questionable and cannot be accepted as the basis for a reduction in assessment.

The Complainant provided a list of equity comparables across the City of Edmonton (C1, pgs. 32-33) with the assessed GIM's ranging from 9.22247 to 12.20430. Based on equity, the Complainant requested the Board reduce the subject GIM to the lowest GIM in that range: 9.22247 (C1, pgs. 57-58) without reason or support. The Board found the group of walk-up apartments with a median GIM of 9.58 (C1, pg. 34), were difficult to compare to the subject property because they are located in different market areas with different characteristics. Furthermore, there was no evidence provided to the Board to indicate the conditions of these comparables are the same as the subject property. The Board placed little weight on the Complainant's equity analysis (C1, pgs.31-58).

The Board placed greater weight on the Respondent's sales comparables (R4, pg. 2) and the Respondent's equity comparables (R4, pg 1). The Board noted the comparable sales are dated February 2008 to June 2009, time-adjusted to the valuation date and exhibit similar attributes to the subject property. The GIM's ranged from 9.81 to 13.24 and the subject property's assessed GIM of 10.89 falls within this range. The equity comparables are all located in the same market area and are of similar age and condition.

The Board finds the assessment of the subject property is fair and equitable.

DISSENTING DECISION AND REASONS

There were no dissenting decisions.

Dated this first day of September, 2010 A.D., at the City of Edmonton, in the Province of Alberta.

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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
City of Edmonton, Assessment and Taxation Branch
City of Edmonton, Law Branch
BPCL Holdings Inc.
Weidner Investment Services Inc.
Thaddeus Kasper
Boardwalk REIT Properties Holdings (Alberta) Ltd.
Mainstreet Equity Corp.
Capital Management Ltd.
Boardwalk REIT Properties Holdings Ltd.