



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON, ALBERTA T5J 2R7
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NOTICE OF DECISION

NO. 0098 49/10

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 12 and 13, 2010 respecting a complaint for:

Roll Number 10153855	Municipal Address 5150 165 Avenue NW	Legal Description Plan: 0829853 Block: 63 Lot: 102
Assessed Value 3,655,500	Assessment Type Annual New	Assessment Notice for 2010

Before:

Lillian Lundgren, Presiding Officer
Petra Hagemann, Board Member
Howard Worrell, Board Member

Persons Appearing: Complainant

Anthony Patenaude, Altus Group Ltd

Persons Appearing: Respondent

Chris Rumsey, Assessment and Taxation Branch
Tanya Smith, Law Branch

A. PRELIMINARY MATTER – REQUEST TO EXCLUDE THE RESPONDENT’S SALES COMPARABLES

Issue:

Should the Respondent’s three sales comparables be excluded under section 9(4) of MRAC?

- a) Does the composite assessment review board have the jurisdiction to hear this matter?
- b) Is the 299(1) request for information clear?
- c) Is the municipality required to provide all of the sales used in the valuation model?
- d) Is the municipality required to disclose possible sales comparables in a 299(1) response?

POSITION OF THE COMPLAINANT

The Complainant requests that the three sales comparables used by the Respondent be excluded from the evidence because they were not included in the list of title transfers sent to the Complainant in the response to the Complainant’s request under section 299 of the *Municipal Government Act* (MGA). The Complainant argues that a composite assessment review board must not hear any evidence from a municipality that was not provided under section 299 of the Act. The *Matters Relating to Assessment Complaints Regulation* (AR 310/2009) states in section 9(4) of failure to disclose:

“A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.”

The Complainant’s copy of the Request for Assessment Information form dated January 8, 2010 showed the roll number and legal description of the property under complaint. The Complainant explained that it expected to receive all of the sales used to prepare the 2010 assessment for this type of property. The Complainant also expected to receive the sales comparables the Respondent would use if a complaint was filed.

On February 5, 2010 the Complainant received a list of approximately 350 title transfers of commercial property which transferred from July 2006 to June 2009, and the three sales comparables are not on that list. Soon after receiving the list of title transfers, the Complainant realized that the list didn’t include all of the sales transactions which occurred in that time frame because the Complainant found additional sales on the Gettel website.

On March 5, 2010 the Assessment Review Board complaint was filed. The Complainant advised the Board that all of the evidence was disclosed according to the timelines set out in the *Matters Relating to Assessment Complaints Regulation* (MRAC), section 8. The Complainant confirms that it received the Respondent’s documentary evidence, including the three sales comparables, at least 14 days before the hearing date.

In answer to a question, the Complainant stated that it was prejudiced by not receiving all of the sales because the analysts at Altus require them, and the case was prepared based on the response.

In conclusion, the Complainant submitted that the composite assessment review board must not hear the Respondent's sales comparables because they were not provided in the section 299(1) response.

POSITION OF THE RESPONDENT

The Respondent is challenging the Board's jurisdiction to hear a complaint about a section 299(1) matter because it is not referred to in section 460(5) of the Act. The Respondent referenced section 467(1) of the Act which states:

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.

And section 460(5) which states:

460(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

- (a) the description of a property or business;*
- (b) the name and mailing address of an assessed person or taxpayer;*
- (c) an assessment;*
- (d) an assessment class;*
- (e) an assessment sub-class;*
- (f) the type of property;*
- (g) the type of improvement;*
- (h) school support;*
- (i) whether the property is assessable;*
- (j) whether the property or business is exempt from taxation under Part 10.*

Since a section 299(1) request is not included in the above list of matters, the composite assessment review board cannot hear it.

The Respondent asserts that the assessed person should make a request to the Minister under section 27.6 of the *Matters Relating to Assessment and Taxation Regulation* (MRAC), Alta. Reg. 220/2004, if the assessed person believes that the City of Edmonton has failed to comply with the request under section 299(1).

With respect to the request of the Complainant to exclude the three sales comparables used by the Respondent, the Respondent is opposed to the request. The Respondent argues that the City is not required to provide any sales in response to a section 299(1) request for information.

Section 299(1.1) sets out the information that must be provided:

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,*

- (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and*
- (c) any other information prescribed or otherwise described in the regulations.”*

The *Matters Relating to Assessment and Taxation Regulation* provides additional guidance with respect to the section 299 requirements:

27.3(1) For the purposes of sections 299(1.1)(b) and 300(1.1)(d) of the Act, the key factors and variables of the valuation model applied in preparing the assessment of a property include

- (a) descriptors and codes for variables used in the valuation model,*
- (b) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the property, and*
- (c) any adjustments that were made outside the value of the variables used in the valuation model that affect the assessment of the property.*

27.1 In this Part,

- (b) “factor” means a property characteristic that contributes to a value of a property.*

It is the City’s position that the above legislation does not require the City to provide any sales information. The City is only obligated to provide the sales comparables in the disclosure package after a complaint has been filed.

The Respondent states that the list of over 350 title transfers is posted on the City website, and it is this same list of title transfers that is sent to every assessed person who makes a request for information under section 299(1). It is provided as a courtesy, and the legislation does not require that it be provided.

In answer to questions the Respondent stated that not all of the sales in the list of title transfers were used in the valuation model. Approximately 102 sales were used in the valuation model, however, it is the Respondent’s position that it is not required to provide a list of all the sales used in the mass appraisal process. The Respondent submits that the complaint is on an individual property and not the entire valuation model.

The Respondent further explained that the sales must be validated before they are used in the valuation model and many of the properties which transfer are not typical transactions in the market place. For example, many title transfers are non-arms length or transferred for nominal values and should not be used because they do not reflect market value.

DECISION

The request to exclude the Respondent’s sales comparables is denied.

REASONS

Issue: Should the Respondent’s three sales comparables be excluded under section 9(4) of MRAC?

- a) Does the composite assessment review board have the jurisdiction to hear this matter?

In determining the Board's jurisdiction in this matter, the Board reviewed section 299(1) of the Act. The access to assessment record is a section of the Act intended to lend transparency to the preparation of the assessment of an "assessed" person's property. An assessed person may, at any time after he receives his assessment notice request information under section 299(1). Section 299(1) is independent of the complaint process, because at this point in time a complaint has not been filed and may not ever be filed.

The Board agrees with the Respondent's position, up to this point only. The Board does not have jurisdiction to determine whether the municipality complied with the assessed person's request under section 299(1) because there is no complaint before the Board. Section 27.6(1) of MRAT provides a remedy to the assessed person who believes that the response to the 299(1) request was insufficient. In this particular case, Altus the agent for the assessed person, made a 299(1) request on January 8, 2010 and received the response from the municipality on February 5, 2010. At this point in time no complaint had been filed with the Assessment Review Board, therefore, the proper recourse for Altus on behalf of the assessed person was to make a request to the Minister for a compliance review under section 27.6(1) of MRAT. Altus did not make a request to the Minister. As well, Altus on behalf of the assessed person could have contacted the Assessment Department about the response, which it did not.

Once the complaint was filed on March 5, 2010, Altus on behalf of the assessed person became a Complainant, and the complaint was properly in front of the composite assessment review board. The Board has the jurisdiction to hear this matter under section 9(4) of MRAC. Section 9(4) is part of the MRAC legislation which deals with hearings before the composite assessment review board and is squarely within the jurisdiction of the Board.

Section 9(4) failure to disclose states: "A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a Complainant under section 299 or 300 of the Act but was not provided to the Complainant. In the CARB's view, applying this provision requires the CARB to consider what information was requested under section 299 that was not provided.

The Board also finds that it has jurisdiction to hear this preliminary matter because it relates to the matter of an assessment as per section 460(5)(c). The Complainant is requesting the Board to exclude the Respondent's sales comparables and sales comparables are an essential consideration in determining whether an assessment reflects market value.

b. Is the 299(1) request for information clear?

The Board finds the request on the Request for Assessment Information form unclear. There was no request for sales used in the valuation model, nor was there any request for potential sales comparables should a complaint be filed. The only information on the form is the legal description of the subject property. Although the Complainant stated it was its expectation that all sales used in the valuation model would be provided, this request was not indicated on the form. The Respondent municipality, could not reasonably have known what information was requested, or this case, what information was expected.

c. Is the municipality required to provide all of the sales used in the valuation model?

In determining this matter, the Board reviewed section 299(1) of the Act which sets out what "sufficient information" in respect of a person's property must include. The Board finds that all the sales, including the three at issue, are not information in respect of the subject property or

information needed to show how the assessor prepared the subject's assessment. Nor are all the sales in the model or the three sales at issue, considered to be "key factors" or "Components and variables of the valuation model". To assist in understanding what is meant in section 299(1.1) the Board reviewed the definitions of "factor" and "variable" in section 27.1 of MRAT. Factor means a property characteristic that contributes to a value of a property. Variable means a qualitative or quantitative representation of a property characteristic used in a valuation model. Clearly, the definitions of factor and variable do not include the list of sales that the Complainant expected to receive in the 299(1) response. The Board has reviewed section 299(1) of the Act and sections 27.1 and 27.3 of MRAT, and the information that is required to be provided in these sections does not include sales information. In conclusion, the Board agrees with the Respondent municipality that the municipality is not required by legislation to provide all of the sales used in the valuation model. If the legislation has intended such a broad response to a 299(1) request, it could have said so.

d. Is the municipality required to disclose possible sales comparables in a 299 (1) response?

After the assessed person received the response to the 299 (1.1) request from the municipality it could have made a request to the Minister for a compliance review under section 27.6 of MRAT. It chose not to make a request of the Minister.

The Board finds that it is unreasonable to expect the municipality to identify and disclose potential sales comparables in case a complaint is filed. After a complaint is filed, the Respondent municipality must, as it did, disclose its sales comparables in compliance with section 8(2)(b)(i) of MRAC. In conclusion, the Board denies the request of the Complainant to exclude the Respondent's sales comparables because the municipality was not required by legislation to disclose them at the time of the 299(1) response.

Finally, there was no prejudice to the Complainant inasmuch as he did receive the sales comparables during the course of the complaint process, and the Complainant was not entitled to them in the 299 (1) response.

B. PRELIMINARY MATTER – REQUEST TO EXCLUDE THE COMPLAINANT’S REBUTTAL EVIDENCE

During the course of the hearing, the Complainant was about to present its rebuttal evidence and the Respondent raised an objection.

POSITION OF THE COMPLAINANT

The Complainant’s rebuttal evidence consisted of the list of title transfers that it received in response to the section 299(1) request. The Complainant sorted the list into four groups: Chinatown, Downtown, University, and Suburban. Suburban properties were separated into two sub-groups: arterial exposure and non-arterial exposure. The Complainant intended to use the sub-group of suburban non-arterial to show that the Respondent’s sales comparables were not from the sub-group of suburban non-arterial properties. The Complainant intended to use the sub-group of properties to rebut the Respondent’s use of properties. The Complainant was not introducing these properties as additional sales comparables.

POSITION OF THE RESPONDENT

The Respondent objected to the rebuttal evidence because it was not evidence to rebut the Respondent’s disclosure in accordance with section 8(2)(b)(i) of MRAC. The Respondent argued that it is new evidence in as much as it is a list of sales not disclosed under section 8(2)(a)(i). Therefore, the Respondent requests the Board to exclude the Complainant’s rebuttal evidence.

DECISION

The request to exclude the Complainant’s rebuttal evidence is denied.

REASONS

The Board finds that the Complainant is not introducing new sales evidence by way of the sub-group of suburban properties. The Complainant was attempting to demonstrate that the Respondent could have selected sales comparables from this group, which sold in the relevant time frame.

C. MERIT HEARING

BACKGROUND

The subject property located at 5150 - 165 Avenue NW is a 165,209 sq. ft. parcel improved with paving, sidewalk, curb, gutter, and a partial building. It is assessed \$2,983,532 for land and \$671,968 for improvements which results in a total value of \$3,655,500.

ISSUES:

- What is the correct assessment per square foot for the land portion of the subject property?

The only issues that the Complainant brought forward in the hearing before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not addressed any of the other issues initially raised by the Complainant on Schedule 1.

LEGISLATION

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

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.

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

The Complainant requested that the assessment for the land portion be reduced to \$1,997,144 (\$12.09/ sq. ft.), and the improvement portion be reduced to zero. After the Complainant became aware of the improvements on the property, the Complainant agreed to use the value of \$671,968 for improvements. This resulted in a revised request of \$2,669,112 for the entire property.

The Complainant submitted six sales comparables which average \$12.09/ sq. ft. and is the basis for the request.

The Complainant presented rebuttal evidence to demonstrate that there are current sales of property which sold between August 2006 and April 2009; therefore, the Complainant questions the reason for the Respondent's use of sales from July 2006 and January 2005.

POSITION OF THE RESPONDENT

The Respondent provided three sales comparables which average \$20.12/ sq. ft. which the Respondent argues, supports the \$18.06/ sq. ft. used to calculate the land assessment.

With respect to the Complainant's rebuttal evidence, the Respondent chose sales comparables in close proximity to the subject, and rejects the Complainant's argument that it should have chosen comparables along 127 Avenue.

FINDINGS

The correct assessment per square foot for the land portion of the subject property is \$18.06.

DECISION

The complaint is denied and the 2010 property assessment is confirmed at \$3,655,500.

REASONS FOR THE DECISION

1. The Complainant provided six comparables as evidence with an average adjusted sales price of \$12.09/sq. ft. compared to the land assessment of the subject at \$18.06/sq. ft. The Board found all of these comparables somewhat lacking due to the geographic distance from the subject property. All of these comparables are significantly smaller than the subject ranging in parcel size from 43,486 sq. ft. to 65, 449 sq. ft. compared to the subject at 165,209 sq. ft.

The property at 12640 - 82 Street sold February 2007 as well as in July 2007 for \$12.03 and \$9.51/ sq. ft. respectively. This property's value may have been negatively influenced by the restrictive covenant easement, fencing and grade separation and that it is not fronting on 82 Street.

The property at 12518 - 97 Street, although on a major thoroughfare with high traffic exposure, and a corner lot, has limited access in and out. Market value may further be negatively influenced by the utility right of way, and the commercial building of minor value located on site.

The last three comparable properties 8735 - 127 Avenue, 8903 - 127 Avenue and 8815 - 127 Avenue are located north of the Canadian National Railway switching yard which may adversely affect their market value.

2. The Respondent provided three sales comparables in close proximity to the subject property.

The property at 16510 - 59A Street sold July 2006 and the property at 16720 - 76 Street sold January 2005. The Board placed little weight on these sales due to the major time adjustment required to bring these sales to market value on July 1, 2009.

The Board placed greater weight on sale #1, located at 16520 - 50 Street, which is across from the subject property. The Board noted that this property sold November 2007 for \$17.01/sq. ft.; however, no time adjustment was provided. This property is approximately two and one-half times larger than the subject and taking into the account the economies of scale, a larger parcel should be valued lower per square foot than a smaller parcel. The subject is assessed at \$18.06/ sq. ft. which bears a reasonable relationship to the sale price of the larger parcel for \$17.01 per sq. ft.

3. The Board notes that the subject property sold December 22, 2003 for the amount of \$1,996,570 or \$12.13/sq. ft. The Complainant is requesting a reduction in the assessment to \$12.09/sq. ft. The Board is not convinced that the subject property has not increased in value from December 2003 to July 1, 2009.
4. The Board agrees with the Complainant that, if possible, current sales of property should be used.

DISSENTING DECISION AND REASONS

There were no dissenting decisions or reasons.

Dated this 26th 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
Sobeys Capital Incorporated