



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON AB T5J 2R7
(780) 496-5026 FAX (780) 496-8199

NOTICE OF DECISION NO. 0098 569/10

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 November 15, 2010, respecting a complaint for:

Roll Number 4132122	Municipal Address 10125 109 Street NW	Legal Description Plan: 9020932 Unit: 521
Assessed Value \$1,951,000	Assessment Type Annual - New	Assessment Notice for 2010

Before:

Steven Kashuba, Presiding Officer
Jim Wall, Board Member
Jasbeer Singh, Board Member

Board Officer: Annet N. Adetunji

Persons Appearing: Complainant

Chris Buchanan, Altus Group Ltd

Persons Appearing: Respondent

Allison Cossey, Assessor, City of Edmonton

PRELIMINARY MATTERS

1. Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file.
2. At the outset of the hearing, both parties requested that most of the evidence and argument presented on Roll Number 4132049 be brought forward to this Roll Number which is under appeal in the same complex. The Board granted this request.
3. Upon submission of the Respondent's brief to the Board (R1), the Complainant pointed out that the disclosure to the Complainant included only 146 pages, while the submission to the Board comprised of 150 pages. The Board directed the Respondent to reconcile this difference with the Complainant.

In the end, the Complainant conceded that in the event that any pages were in fact missing from the submission they received, this would not cause the Complainant any concern as these would have been covered off in related files (i.e., cross-reference Roll Number 4132049) under appeal and in any case, dealt only with issues of law and legislation and did not comprise any substantive evidence.

BACKGROUND

The subject property is a main floor retail/office condominium located at 10125 109 Street and legally described as Plan: 9020932 Unit: 521. The unit has a gross area of 6,250 square feet. The complex that the subject is located in was constructed in 1981 and has various retail/office areas on the main floor, an underground heated parkade and multiple floors of condominiums. The subject unit is used as a restaurant and pub. The current year (2010) assessment is \$1,951,000 or \$312 per square foot.

ISSUES

The Board notes that the Complainant submitted a number of issues (C1, page 3); however, the following two issues were crystallized by the Complainant:

1. The sales comparables do not support the assessment.
2. The equity comparables do not support the assessment.

LEGISLATION

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

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.*

COMPLAINANT'S POSITION

1. It is the position of the Complainant that the assessment of the subject property for the current year is too high and, in particular, the current assessment amount of \$1,951,000, that is 54% higher than \$1,266,000, which was the assessment in 2009 (C1, page 8).
2. The Complainant presented 11 sales comparables (C1, page 9), 4 of which occurred in Central McDougall subdivision while 7 occurred in the Westmount subdivision. On average, the adjusted sales price of these properties is \$259.36 per square foot while the assessment of the subject is \$312 per square foot. Further to this, the Complainant submitted that the comparables are located along major arterials and occupy central locations on the north side of the river. In addition, they are all retail or office condominiums as is the subject property.
3. The Complainant presented 11 equity comparables (C1, page 11), which were the same properties as presented in the sales comparables in #2, above and which, on average, reflect assessment values of \$278.63 per square foot.

RESPONDENT'S POSITION

1. In support of the assessment, the Respondent presented 4 sales comparables (R1, page, 33). The effective year of construction for these sales comparables ranged from 1995 to 2005 while the year of construction for the subject property is 1981. One of the 4 comparables is located on Whyte Avenue and constitutes a refurbishment of the previous St. Joseph's Hospital and the other 3 comparables are located relatively close to the subject property in the down town area. The other variables of net building size, sale date, sale amount and adjusted sale price per square foot are considered in the table. Of particular note is the range of adjusted sale prices per square foot from \$341 to \$540 while the assessment amount of the subject property is \$312 per square foot.
2. The Respondent presented 4 equity comparables (R1, page 81) which are the same properties as presented in the sales comparables (see #1, above). Within this table are presented the variables of net building size, year built, and assessment amount per square foot. On average, the equity comparables are \$402 while the assessment of the subject property is set at \$312 per square foot.
3. The Respondent submitted that the subject unit is equipped with built-in freezers and other upgrades and was set up as an upper-end restaurant and pub and merited a considerably higher per square foot assessment compared with similar spaces serving as office premises.
4. The Respondent presented a number of photographs, one of which (R1, page 18) showed that the restaurant had the advantage of having patio seating for its patrons. In response to

a question, the Respondent submitted that this patio was neither considered to be the common area within the complex nor was it specifically assessed.

5. In further support of their position, the Respondent presented Board Orders MGB 053/10; MGB 054/10; and a decision from CARB Roll Number 10153855, July 2010.

DECISION

The Board confirms the 2010 assessment of the subject property at \$1,951,000.

REASONS FOR THE DECISION

1. The Board considered the Complainant's submission that the current assessment is 54% higher than was the case in 2009. In examining the record, the Board agrees that this calculation is correct. However, the Board finds in favor of the Respondent because each year's assessment is considered on its market value and as compared with the assessments of similar properties. In this case, the evidence presented by the Respondent leads the Board to conclude that the subject property is assessed fairly and correctly.
2. The 11 sales comparables provided by the Complainant (C1, page 9) are significantly different from the subject in terms of location, quality of construction, size and nature of structures, and exposure to traffic to provide a true comparison. The Board, therefore, is not persuaded by the merits of these comparables.
3. The Board finds, based on argument presented, that the subject unit's location with frontage on an arterial roadway (109 Street) in the down town area, is superior to the Complainant's sales comparables (C1, page 9).
4. The Complainant confirmed that no adjustments other than time had been applied to his sales comparables. The Board was persuaded that other adjustments, particularly for location, if applied would result in an adjusted value indicated by the Complainant's sales comparables which supports the 2010 assessment.
5. The Complainant submitted that the comparable sales used by the City included parking stalls (C1, page 5). However, only a scant mention of this was made in the oral submissions and the argument was neither pursued nor any supportive evidence provided.

A scrutiny of the Respondent's submission (R1, pages 34-80) revealed that while sales comparable #1 (R1, page 33) did include one underground parking stall, the other 3 comparables showed no indication of any parking stall(s) being included in the sales or the assessment figures. As a consequence, the Board finds that little weight can be assigned to the Complainant's position that the element of parking stalls makes any significant impact on the value of the comparables provided.

6. The Board is persuaded that the application of various adjustments to reflect differences between the equity comparables and the subject, particularly for location would result in the Complainant's equity comparables (C1, page 11) supporting the \$312 per square foot assessment of the subject.

7. The onus of proving the incorrectness of an assessment is on the individual alleging it. The onus rests with the Complainant to provide sufficiently convincing evidence on which a change to the assessment can be based. The Complainant's evidence needs to be sufficiently compelling to allow the Board to alter the assessment (R1, page 97).
8. It is for these reasons that the Board concludes that the assessment of the subject property is fair and correct should not be disturbed.

Dated this 18th day of November, 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
Capital Centre Nominee Company