



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION NO. 0098 751/10

Altus Group Ltd
17327 - 106A Ave
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 between November 22 and December 10, 2010 respecting a complaint for:

| | | |
|------------------------------------|---|---|
| Roll Number 1275544 | Municipal Address 9516 - 155 Street, NW | Legal Description Plan: 6530ET Block: 7 Lot: 6 |
| Assessed Value \$231,500 | Assessment Type Annual - New | Assessment Notice for 2010 |

Before:

Robert Mowbrey, Presiding Officer
Jim Wall, Board Member
Jasbeer Singh, Board Member

Board Officer: Annet N. Adetunji
Counsel to Presiding Officer: Peggy Kemp

Persons Appearing: Complainant

From Altus Group Ltd:

Stephen Cook, Director
Anthony Patenaude, Sr. Tax Consultant
John Trelford, Director
Keith Wensel, Witness

Ryan Penner, Barrister and Solicitor
Macleod Dixon LLP

Persons Appearing: Respondent

From the City of Edmonton:

Cameron Ashmore, Barrister and Solicitor
Aleisha Bartier, Barrister and Solicitor
Renee Gosselink, Assessor
Kevin Smyl, Assessor
Tracy Ryan, Assessor
Vasily Kim, Assessor
Brennen Tipton, Assessor
Darren Davies, Assessor
Chris Rumsey, Assessor

Andy Chopko, Appraiser/Consultant
Impact Property Advisors Ltd.

A. PRELIMINARY AND PROCEDURAL MATTERS

1. Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board.
2. The Respondent raised a number of preliminary issues stating that procedural fairness throughout the hearings was the goal. The Complainant stated that an adjournment was necessary, so that the Complainant can meaningfully respond to the procedural issues raised by the Respondent and possibly even come to an agreement with the Respondent on some of the issues.
3. The Board recessed, deliberated and rendered a decision to the parties. The decision was that an adjournment request would be granted and the hearing would continue a day and a half later.
4. When the hearing continued, Jim Wall, a Board member, advised the parties that he had a professional relationship with the Respondent's capitalization rate study witness, Andy Chopko. In addition, the Board member stated that he had known the Respondent's witness for 40 years and at one time had a mentoring relationship with the witness; and several years ago had shared office space with the witness. The Board member further stated that he also knew the Complainant's expert witness and was known to most of the veteran appraisers throughout the City. The Respondent confirmed that he had spoken with the witness and from their point of view, there was no bias. The Complainant was concerned with the perception of bias and requested the Board member to recuse himself.
5. The Board recessed, deliberated and rendered a decision. The decision given by the affected Board member was that he had considered the Complainant's objection, and believed that an informed and reasonable person viewing the question objectively would not reasonably believe that the circumstances described would give rise to any apprehension of bias. Therefore the affected Board member would not be recusing himself and the other Board members concurred.

The preliminary issues raised and the results are as follows:

6. Roll number to start with: There are 57 suburban office property and 5 parking lot files under appeal before the Board. The Complainant and the Respondent both stated that they would like to arrange the order of files on the docket. The Board advised the parties that since the Complainant initiates the Complaint, the Board does not see any problem with the method the Complainant has outlined and will proceed in the manner the Complainant has arranged the order of the files on the docket.
7. Decisions and Exhibits: Both parties agreed that each file would be opened individually and a written merit decision would be completed for each file. Both parties also agreed that the evidence and argument from this hearing will be carried forward to all the suburban office hearings. In addition, there was agreement as to how the exhibits were to be marked.
8. Summaries: The question was raised as to the summaries and the last word after all evidence had been given and cross examination had been completed. The Complainant asked for a two step process, whereby the Respondent would summarize first and then the Complainant

would summarize and have the last word. The Respondent did not give an opinion, but wanted consistency throughout the hearings. The Board advised the parties that the procedure would be what the composite assessment review board in Edmonton is using. The procedure is that after all evidence has been given and cross examination has been completed the Complainant gives its summary, the Respondent gives its summary and the Complainant has the last word. The Board could not see any reason to change the procedure of the Edmonton composite assessment review board.

9. Paneling of Witnesses: The question arose regarding whether the Complainant's witnesses would be allowed to answer questions on cross examination as a panel. The Board noted that the evidence given is a collective effort and that there is joint ownership of the written submissions. However, having said that, the Board required that the witness giving the evidence should be the witness that answers the cross examination regarding the testimony. The Board further advised the parties that caucusing for answers would be discouraged.
10. Expert Witnesses: The question arose whether the witnesses need to be formally qualified as "experts" to give opinion testimony or whether their qualifications go to weight. Opinion evidence could be received by the Board essentially because the issue on which the opinion being given was beyond the ken of ordinary people. The Board's decision is not to formally qualify the expert witnesses. The Board does not have to follow the same rules of evidence as a court. The Board will take note of the expert witnesses' qualifications and experience and place the appropriate weight on their testimony.
11. Swearing and Affirmation: Both parties agreed that the witness would be sworn in or affirmed prior to the witness giving testimony for the first time. The swearing or affirming of the witness would carry forward until all of the hearings are complete.
12. Issues common to all files: Since the issues of rental rates and capitalization rates are common to all files before the Board, both parties agreed to carry forward all evidence, arguments and cross examination during the hearing on Roll # 1560150 (the first file to be heard), to all other suburban office files before the Board.
13. Lead Files: Suburban Office files have been grouped by district and sub-class. The first file in each group will serve as the 'lead file' and all evidence, arguments and cross examination in respect of this file, will, with the agreement of both parties, apply to all other files in the group.
14. Excess Land: A few files on the list for hearing by the Board have issues pertaining to 'Excess Land'. Both parties were in agreement that all evidence, arguments and cross examination in respect of the first file with Excess Land component, will apply to all other files in the group.

B. BACKGROUND

15. The subject property is a vacant plot of land that serves as a 'Parking Lot' for 'West Edmonton Medical Professional Building' located at 9516 – 155 Street. The subject property has a land area of 7,397 square feet and a 2010 assessment value of \$231,500. This includes an amount of \$3,258 as the depreciated value of improvements (paving).

C. ISSUES

- a) Issue 1: Should the Respondent's capitalization rate study be excluded for non-compliance with sections 299 and 300 of the *Municipal Government Act (MGA)*, R.S.A. 2000, c. M-26?
- b) Issue 2: Is the 2010 assessment for the property appropriate?

ISSUE 1: SHOULD THE RESPONDENT'S CAPITALIZATION RATE STUDY BE EXCLUDED FOR NON-COMPLIANCE WITH SECTIONS 299 AND 300 OF THE MGA?

16. The Complainant brought forth a preliminary issue prior to the Respondent's expert witness, Mr. Chopko, giving testimony. The Complainant's issue was that the Respondent had not complied with sections 299/300 of the *MGA*. The Complainant advised the Board that the Complainant had requested the capitalization rate study from the Respondent under sections 299 and 300. The Complainant asked that Mr. Chopko's report be removed from the evidence under section 9(4) of the *Matters Relating to Assessment Complaints Regulation (MRAC)*, AR 310/2009 because they had not received an appropriate response from the Respondent and sections 299/300 had been breached. The sections are outlined as follows:

S.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.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

S.300 (1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

The MRAC:

Failure to disclose

S.9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(4) 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.

17. The Respondent stated that this was the first they had heard of this preliminary application and stated that there was no section 299 request in the materials filed. The Respondent advised the Board that section 299(1) does not say a municipality must provide “all” that had been requested. The Respondent also noted that the two sections are different and that different information can be requested under each of them. The Respondent stated the information requested under section 299 is given solely to the owner of the property or the representative of the owner.

18. The Respondent advised the Board that section 27.3(1) of the *Matters Relating to Assessment and Taxation Regulation (MRAT)*, AR 220/2004 regarding key variables of valuation model does not say that capitalization rates and rental rates must be provided.

The MRAT:

Key factors and variables of valuation model

S.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.

(2) Despite subsection (1), information that is required to be provided under section 299 or 300 of the Act does not include coefficients.

19. The Respondent stated that the Complainant could have asked for a compliance review under section 27.6(1).

Compliance review

S. 27.6(1) In this section, “compliance review” means a review by the Minister to determine if a municipality has complied with an information request under section 299 or 300 of the Act and this Part.

(2) An assessed person may make a request to the Minister, in the form and manner required by the Minister, for a compliance review if the assessed person believes that a municipality has failed to comply with that person's request under section 299 or 300 of the Act.

(3) A request for a compliance review must be made within 45 days of the assessed person's request under section 299 or 300 of the Act.

20. The Complainant produced an e-mail from the Government of Alberta, Municipal Affairs (Advisor, Stakeholder Relations/Assessment Services) advising the Complainant that the Minister cannot compel a party to disclose via a compliance review. The Complainant is not interested in the municipality being fined, but only interested in receiving the information.

21. The Complainant stated that section 27.3 only sets out the bare minimum of what has to be provided. Also, the Complainant stated that section 27.3 only talks about direct sales modeling and this property was assessed on the income approach. The Complainant stated that the legislators did not intend for no information to be provided about property assessed on the income approach.

22. After hearing the arguments from both parties, the Board recessed. After deliberating, the Board rendered its decision to both parties. The decision was that the capitalization rate study would not be excluded.

The reasons for the decision are:

23. The Board notes that the Complainant did not produce a copy of the letter requesting information from the Respondent under section 299 or 300. Therefore the Board cannot evaluate the request to determine if it was made properly.

24. The Complainant did not explain to the Board why "sufficient information to show how the assessor prepared the assessment" as stated in section 299 would necessarily include a capitalization rate study. A capitalization rate study used in preparing the assessment(s) of property might be part of "*sufficient information to show how the assessor prepared the assessment*" but the Board finds that a capitalization rate study prepared for the purpose of defending the assessment cannot be requested under section 299 or 300.

25. The Board also observed that the capitalization rate study was provided to the Complainant in compliance with the disclosure requirements set out in section 8(2) of *MRAC*. The Board sees no other reason to exclude the study and notes that a high quality decision is more likely to result if all the relevant evidence is presented to the Board.

The *MRAC*:

Disclosure of evidence

S.8(1) In this section, "complainant" includes an assessed person or taxpayer who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent 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 complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

(ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

(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

(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence.

ISSUE 2: IS THE 2010 ASSESSMENT FOR THE PROPERTY APPROPRIATE?

Complainant's Position

26. The Complainant (Altus) presented a binder of information to the Board comprising the Complainant's evidence (marked as Exhibit C-2S) in addition to a site specific document with 62 pages (marked as Exhibit C-1-20C).

27. The Complainant argued that the Respondent had not been compliant with section 293 of the *MGA* in assessing the subject properties for the 2010 assessment year. The use of incorrect income approach calculations and assumptions had resulted in inaccurate assessed rents, low capitalization rates and site specific issues.

28. The Complainant argued that the valuation standards (included in section 293, *MGA*) do not permit the assessor to apply any 'site specific values' and therefore the assessments made are not fair in relationship to the sale prices, and the valuation inputs had also been derived through inappropriate market analysis. The Complainant stressed that the Respondent's departure from the practice of time adjusting sale prices had resulted in inaccurate and unfair results in respect of the subject property.

The *MGA*:

S.293 (1) In preparing an assessment, the assessor must, in a fair and equitable manner,

- a) Apply the valuation standards set out in the regulations, and*
- b) Follow the procedures set out in the regulations.*

The *MRAT*:

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.

- 29. The Complainant presented several sales comparables (Exhibit C-1-20C, page 9) and argued that these sales comparables indicated a much lower market value of \$91,500 for the subject property.
- 30. The Complainant also provided equity comparables (Exhibit C-1-20C) which suggested a fair and equitable value for the subject property to be \$89,000.
- 31. The Complainant argued that the subject property's (one of three) value was intrinsic to the professional office building, to which it was functionally integrated. The value of the subject property had been captured in the assessment of the adjoining office building, and any additional assessment in respect of the subject property would amount to double taxation.
- 32. The Complainant stressed that the rental rate applied to the office property was not possible without the subject property (and the other four similar properties) being available to meet the parking needs of the business clients.
- 33. The Complainant argued that while the assessed value of two other similar lots in us as parking lots (roll numbers 3024221 and 3024213) had been deducted from the business assessment, the assessed value of the subject lot (\$231,500) had not been similarly deducted.

Respondent's Position

- 34. The Respondent presented the Board with two evidence binders (Exhibits R-2 and R-3) as support for the 2010 assessment on suburban office properties located in seven basic market areas of the City; R-2 consists of 13 sections numbered 1-13 and R3 contains sections 14-17.
- 35. Section 1 confirms that assessments in the Province of Alberta must be carried out on the basis of mass appraisal. The Respondent quotes from The International Association of Assessing Officers, Property Appraisal and Assessment Administration, Chicago, Illinois, 1990, pages 88-89 and states:

“ single property appraisal is the valuation of a particular property as of a given date; Mass appraisal is the valuation of many properties as of a given date, using standard procedures and statistical testing”

“Also, mass appraisal requires standardized procedures across many properties. Thus valuation models developed for Mass appraisal purposes must represent supply and demand patterns for groups of properties rather than a single property”(Exhibit R-2, section 1-1).

- 36. The Respondent, in exhibit R-1-20C, page 15, provided six sales comparables which indicated an average sales price of \$43.23 per square foot. No equity comparables were presented by the Complainant.

DECISION

37. The decision of the Board is to confirm the 2010 assessment at \$231,500.

D. REASONS FOR THE DECISION

38. The Board was persuaded by the Respondent's evidence (Exhibit R-1-20B) highlighting the equitable assessment of the subject property.

E. DISSENTING DECISION AND REASONS

39. There were no dissenting opinions.

Dated this 24th day of February, 2011, at the City of Edmonton, in the Province of Alberta.

Robert Mowbrey
Presiding Officer

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD

| Exhibit No. | Item |
|--------------------|--|
| C-1-20C | Complainant's Disclosure and Witness Report |
| C-2S | Complainant's Addendum |
| C-4 | Complainant's Excerpts from the <i>MGA</i> , <i>MRAT</i> and <i>MRAC</i> |
| C-5 | Complainant's ARB Order |
| C-6 | Complainant's Main Rebuttal |
| C-6A | Complainant's Witness Report |
| C-7 | Complainant's Rebuttal – Combined Income Statements and Rent Rolls |
| R-1-20C | Respondent's Assessment Brief |
| R-2 | Respondent's Master Suburban Assessment Brief 1 of 2 |
| R-3 | Respondent's Master Suburban Assessment Brief 2 of 2 |
| R-4 | Respondent's Ontario Court of Appeal Decision, 2010 ONCA 672 |
| R-5 | Respondent's Tax Court of Canada Decision, 2005 TCC 34 |

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
Hans Heinrich Von Srbik Jr.