



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 783/11

Altus Group
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 February 27, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
4259685	3110 Calgary Trail NW	Plan: 5711KS Block: A / NE 5-52-24-4	\$10,311,000	Annual New	2011

Before:

Tom Robert, Presiding Officer
Brian Hetherington, Board Member
Howard Worrell, Board Member

Board Officer: Jason Morris

Persons Appearing on behalf of Complainant:

Walid Melhem, Altus Group

Persons Appearing on behalf of Respondent:

Frank Wong, Assessor, City of Edmonton
Tanya Smith, Law Branch, City of Edmonton

PROCEDURAL MATTERS

The Parties indicated that they had no objection to the composition of the Board.

PRELIMINARY MATTERS

Admissibility of Evidence on Excess Land

A preliminary issue was raised by the Respondent relating to the admissibility of part of the Complainant's evidence. Section 9(1) of the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 reads:

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.

The Respondent argued that "excess land" was an issue not identified on the Complaint form, and that for this reason matters relating to excess land are not admissible before the Board. The Respondent noted that the Complainant relies heavily on this evidence in their disclosure. The Respondent noted this objection on page three of their evidence package (R1), which was disclosed to the Complainant.

In support of this argument the Respondent included a Complaint form from another roll number but prepared by the same agency, where under Section 5 "Reasons for the Complaint", the Complainant specifically mentions excess land. The start of Section 5 in both forms reads "In addition to Schedule A". The same Schedule A was attached to both the example complaint form, and the complaint form for the subject property. The Respondent argued, therefore, that if in this comparable file excess land was a matter in addition to Schedule A, it cannot have been included in Schedule A in the complaint for this property.

In response to this, the Complainant suggested that the question of excess land was included in the identified issues of market value, or the correct income parameters. The Complainant also indicates that the example provided by the Respondent was a hearing in which the Complainant was arguing that land from other roll numbers was being included in the assessment of the roll number under complaint, and that this was not the case with the subject property.

The Board agreed with the Complainant that the market value of the subject property is an issue identified on the complaint form. Further, the Board agreed with the Complainant that excess land is a matter in support of an argument that the market value is different from the assessment. As such, evidence with regard to market value is a matter in support of an issue identified on the complaint form. The requirements of section 9(1) of MRAC are therefore met, and the disputed evidence was accepted.

Admissibility of Rebuttal Evidence

The Respondent raised another preliminary issue with regard to the admissibility of pages 2 and 3 of the Complainant's rebuttal document. The Respondent argued that these pages were not a response to information that had been included in the Respondent's evidence, but rather were new evidence that should have been included in the Complainant's original submission, and that the Respondent now had no opportunity to respond to. The Respondent provided a prior CARB decision, 2614/2011-P, as a reference on the definition of rebuttal evidence.

The Complainant clarified the content of the two disputed pages for the board, and suggested that they were in response to issues raised by the Respondent in their evidence with regard to the available uses for the property.

The Board considered the two pages, and determined that they both consisted of information that the Complainant should reasonably have expected to have been in issue at the time of filing his disclosure. As such they were not properly filed as rebuttal, and were disallowed. They were not spoken to in oral evidence and argument, and were not considered by the Board.

BACKGROUND

The subject property is a two story retail and warehouse building located at 3110 Calgary Trail NW. The building is 35,927 square feet on a lot of 218,077 square feet. It was assessed on the income capitalization approach, and the 2011 assessment was \$10,311,000. The subject property is zoned DC-2 with site specific requirements.

ISSUE(S)

- 1) Is the current assessment in excess of market value?
- 2) Is the size and rate used for the excess land excessive?

LEGISLATION

Municipal Government Act, RSA 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.

POSITION OF THE COMPLAINANT

The Complainant provided a 48-page brief identified as (C-1). This brief contained an executive summary, issue statement, maps, photos, assessment summary, a copy of the DC-2 Zoning Bylaw, a copy of Zoning Bylaw 12800 dealing with parking requirements, a requested market value proforma, five comparable land sales and Legal Submissions.

The zoning and parking bylaws were provided to the Board to illustrate the parking requirements and site restrictions of the subject property's 218,077 square foot lot. In setting the assessment, the City has chosen to use only the main floor's 17,964 square feet to calculate the excess land on the site. The subject is two stories and has additional parking requirements for the second floor. The following chart shows the assessment calculations from the City of Edmonton's Valuation Summary;

Excess Land Value Calculation (Box Retail Valuation Summary)

	Building Footprint		
	Area	Land Size	Site Coverage
Actual Coverage	17,964	218,044	8%
Threshold Coverage	17,964	71,856	25%
	Actual	Threshold	Excess land size
Excess land	218,044	71,856	146,188

The following chart provided by the Complainant shows the correct excess land calculation if the building size is used and not the footprint;

	Building Size		
	Area	Land Size	Site Coverage
Actual Coverage	35,927	218,044	16.5%
Threshold Coverage	35,927	143,868	25%
	Actual	Threshold	Excess land size
Excess land	218,044	143,868	74,336

In using the corrected excess land calculation the residual land size should be 74,336 square feet.

The Board was provided with an Excess Land Value chart for five sales comparables. These comparables had sales dates ranging from September 2006 to Jan 2010 and showed site areas ranging from 103,917 square feet to 216,678 square feet. Time-adjusted sales prices showed a range of \$20.66 square feet to \$23.66 square feet with an average of \$22.25 square feet and a median of \$22.75 square feet. The Complainant requested a \$22.75 per square foot rate be used for the residual land.

Using the corrected excess land value of 74,336 square feet and requested \$22.75 per square foot value for the land produces a value of \$1,691,137. By applying this value to the Requested Market Value Proforma the 2011 assessment for the subject property should be reduced from \$10,311,000 to \$6,667,000.

POSITION OF THE RESPONDENT

In support of the City's assessment of the subject property at \$10,311,000, the Respondent presented the Board with a 183-page presentation (R1), which included a map and aerial view of the subject property's location; a box retail valuation summary; data dealing with excess land size calculation and land value including five comparable properties; an MGB decision on the subject property in 2007; a 73-page decision of the MGB on a 2007 appeal of a 2005 decision by an Assessment Review Board in Calgary; a nine-page Notice to Decision by the MGB in 2007; a decision of the Assessment Review Board on the Petro Canada site at 2520 Calgary Trail; a copy of the Complainant's Complaint Form, together with a separate Complaint form filed on the same date but identifying excess land; and a 42-page City of Edmonton's Law and Legislation document.

The Respondent explained to the Board that the City's long-established procedure in assessment decisions is to use the building's footprint. The Respondent's legal counsel drew attention to the prior decisions of the MGB on previous issues which were based on this property and similar issues.

Several paragraphs of the MGB decisions used in the Respondent's presentation were highlighted to draw attention to the fact that the MGB ruled that a building's footprint – and not the total square footage of the space – was used in developing the assessment.

In reviewing the excess land aspect, the Respondent presented information that showed that excess land calculations had changed from 30% of the site coverage in 2007 to 25% of the site coverage in 2011. Related to this was information from prior decisions that calculations should be made on the building's footprint.

On land value, the Respondent presented information on the sales of three properties in the same geographic area of Edmonton to the subject property. These showed time-adjusted sale prices from \$31.11 to \$45.04 per square foot, producing an average of \$36.35 per square foot, which he suggested to the Board supported the City's assessment of the subject property at \$36.50 per square foot.

DECISION

The decision of the Board is to confirm the assessment at \$10,311,000.

REASONS FOR THE DECISION

The Board determined from both parties that the issues to be considered were how excess land should be calculated and the market value of the excess portion of land as of July 1, 2010.

The Board was persuaded from past Municipal Government Board orders, as well as City of Edmonton Assessment Review Board and City of Calgary Assessment Review Board orders (DL 050/07), (MGB 002/07) and (DL 118/07), which were consistent in stating that "excess land" is the amount of land that exceeds "typical" site coverage, irrespective of the existing improvement. The Board finds that the 25% site coverage deemed typical by the Respondent from analyses of previous issues of this kind is an acceptable estimate for the subject property. The method to calculate the excess land is correct, and that the appropriate building area is the footprint.

In regard to the issue of the market value of the excess land, the Board has determined that the assessment comparables presented by the Respondent at 2904 Calgary Trail and 2520 Calgary Trail are most similar in terms of location to the subject property. The values of \$45.04 and \$35.91 per square foot, respectively, support the assessment per square foot of \$36.50.

Therefore the Board confirms the assessment of the subject at \$10,311,000.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 28th day of February, 2012, at the City of Edmonton, in the Province of Alberta.

Tom Robert, 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, RSA 2000, c M-26.

cc: 552861 ALBERTA LTD