ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 79/10

Altus Group Ltd.
17327 - 106A AVE
Edmonton AB T56 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 June 28 – 30 and July 2, 2010 respecting a complaint for:

Roll Number	**Municipal Address**	**Legal Description**
3201712	10310 – 102 Street NW	Plan NB1 Block 2 Lots 185 – 204
Assessed Value	**Assessment Type**	**Assessment Notice for:**
$1,680,000	$395,000	2010

Before:

Steven Kashuba, Presiding Officer
Brian Frost, Board Member
Terri Mann, Board Member

Board Officer:

Segun Kaffo

Persons Appearing: Complainant
John Trelford
Chris Buchanan

Persons Appearing: Respondent
Chris Rumsey, Assessor
Tanya Smith, Law Branch

In rendering its decision on Roll #3201712, it should be noted that this Roll Number is considered to be the Master File and that the decision of the board on this file also applies to the twenty (20) additional Roll Numbers as presented in **Schedule A,** below. The Table presents a summary of the applicable Roll Numbers, the assessed value, and the Complainant's requested adjustment for each Roll Number.

SCHEDULE A

Municipal Address: 10320 – 102 Street NW
Legal Description: Plan NB1, Block 2, Lots 185 - 204

Roll Number	Assessed Value	Assessment Type	Assessment Year	Requested Adjustment
3201712	1,680,000	Annual – New	2010	395,000
3201878	1,261,000	Annual – New	2010	296,500
3201852	1,261,000	Annual – New	2010	296,500
3201845	1,261,000	Annual – New	2010	296,500
3201837	1,225,000	Annual – New	2010	288,000
3201738	1,261,000	Annual – New	2010	296,500
3201720	1,366,500	Annual – New	2010	296,000
3201746	1,261,000	Annual – New	2010	296,500
3201753	1,261,000	Annual – New	2010	296,500
3201779	1,261,000	Annual – New	2010	296,500
3201787	1,261,000	Annual – New	2010	296,500
3201795	1,261,500	Annual – New	2010	296,500
3201811	1,261,500	Annual – New	2010	296,500
3201829	1,242,000	Annual – New	2010	292,000
3201860	1,261,000	Annual – New	2010	296,500
3201886	1,261,000	Annual – New	2010	296,500
3201894	1,260,500	Annual – New	2010	296,500
3201902	1,260,500	Annual – New	2010	296,500
3201910	1,260,500	Annual – New	2010	296,500
3201928	1,367,000	Annual – New	2010	296,500
3201761	1,247,500	Annual – New	2010	282,500

PROPERTY DESCRIPTION

The subject property, owned by 672884 Alberta Ltd., is located at 10310 – 102 Street NW, and is considered to be in the *downtown subdivision of the City*. Consisting of 9,999 square feet in area and zoned as CCA, the subject property is best described as a *paved parking lot.* Its current assessment is set at $1,680,000.

PRELIMINARY MATTERS

At the outset of the hearing the Complainant brought forward two preliminary matters while the Respondent brought forward one preliminary matter. These preliminary matters are as follows:

1. The Complainant submitted that the Respondent's website disclosure was insufficient and that in particular, the Respondent failed to disclose four sales comparables;

2. The Complainant submitted that the Respondent failed to reply in a satisfactory manner to their *s.300* request for information pursuant to the *Municipal Government Act*;
3. The Respondent submitted that the Complainant's rebuttal evidence is not admissible as it is not proper rebuttal evidence.

Preliminary Matter #1: The City's website disclosure is insufficient

The position of the Complainant

The Complainant submitted that the Respondent's disclosure via the internet (website disclosure) was insufficient, as it did not meet the requirements of s.8 and s.9 of *Matters Relating to Assessment Complaints Regulation* (MRAC). The Complainant further submitted that the website disclosure was incomplete and inaccurate by providing illustrations in support of this submission. The Complainant argued that as a result, all of the Respondent's sales comparables should be excluded.

The Complainant noted that four sales comparables which were referenced in the Respondent's disclosure provided to the board at the hearing, had not been made available in the website disclosure, and that therefore these sales, in particular, must be excluded.

The position of the Respondent

The Respondent argued that their website disclosure was adequate, and that the disclosure had been properly made in the *title transfers* which were readily available on the City of Edmonton's website. In this regard, the Respondent did acknowledge that there were inaccuracies in the information provided on the website but argued that the Complainant was responsible '*…for undertaking their own due diligence.'*

The Respondent acknowledged that four sales comparables (R-3, page 15, roll numbers 10020550/1, 10014626/7, 3221306, and 3105681) had not been disclosed to the Complainant, in the web disclosure.

Decision of the board as regards Preliminary Matter #1

Having heard the arguments of both parties, the board finds that for the purposes of this hearing, the element of disclosure under s.8 and s.9 of MRAC have been met by the Respondent through the provision of information contained in the website as regards *sales comparables* and/or *title transfers*. In this regard, the board concludes that the provision of this information by the Respondent is sufficient in nature so as to allow the Complainant to prepare their evidentiary package in support of their request for an adjustment to the assessment. However, the board notes that the disclosure should, to the extent possible, be accurate, complete, and specific to the information requested by the Complainant. Notwithstanding, the board agrees that each party must indeed conduct their own due diligence.

As regards the four sales comparables that were not provided, the board finds that these sales comparables were not properly disclosed, and must be excluded from evidence.

Preliminary Matter #2: The City failed to reply in a satisfactory manner to a request for information pursuant to s.300 of the Municipal Government Act.

Position of the Complainant

The Complainant asserted that they made a formal request of the City pursuant to section 300 of the *Municipal Government Act* to '*…see or receive a summary of the assessment of any assessed property in the municipality…*' through which they could identify the specific adjustments to the general valuation of all downtown lands, including corner adjustments, adjustments made to remnant lots, adjustments made for access to arterial roadways, and size adjustment factors. In particular, they stated that they had made the following request for information from the municipality:

- *the land base rate for vacant land assessments downtown and how this value was derived (including sales used and all adjustments to the sales).*
- *an explanation of all regular adjustments made to properties, including corner adjustments made to remnant lots, and adjustments made for access to arterial roadways and size adjustment parameters.*
- *Time adjustments for multi-family land* (C-2, Tab 2).

The Complainant did acknowledge that the City of Edmonton website posted title transfer information on non residential sales in the city. However, they complained that it was difficult to access this information, and cost prohibitive. The Complainant specifically argued that a s.300 request entitled them to receipt of sales comparables. The Complainant emphasized the consequence of the Respondent's failure to comply with the s.300 request, enumerated in s.9(4) of MRAC, namely that the board could not hear any of the Respondent's evidence pertaining to information that was requested but not received (i.e., sales comparables). Finally, the Complainant noted that he did not receive specific information on adjustments other than a handwritten notation stating, *no time adjustments.*

Position of the Respondent

The Respondent submitted that the Complainant had not made a s.300 request or alternatively, that the request was made not in the proper form (i.e., not in the form prescribed by the municipality). The Respondent submitted that, in any event, homeowners had access to the information requested, that the voluminous list of sales utilized was readily available for review on the City of Edmonton website, and that ultimately the Complainant was responsible for their own due diligence in reviewing, identifying, researching, and confirming the validity of those sales which were of particular interest for the subject assessment.

The Respondent acknowledged that the items enumerated in s.300(1.1) are required for provision pursuant to a valid s.300 request; however, denied that the s.300 request would entitle an assessed person to receive comparable sales.

Finally, the Respondent asserted that the board did not have jurisdiction to undertake a review of the sufficiency of documentation provided in reply to a s.300 request. In this regard, the Respondent submitted that only the Minister has authority to determine whether a

municipality has failed to comply with an assessed person's request under section 300 of the Act, pursuant to MRAT s.27.6.

Decision of the board as regards Preliminary Matter #2

The board finds that it does have jurisdiction to undertake an analysis of whether a reply by the municipality to a Complainant, pursuant to a s.300 request, is satisfactory. In this regard, the board has reviewed MGA s.460(5)(c) which states that a complaint may be about an *assessment*. Also, the board reviewed MGA s.460.1(2) which states that, *…subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).*

The board also considered MRAC s.9(4) which states that *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,* and concludes that as a practical and necessary step to the imposition of the consequence enumerated in s. 9(4), the board must undertake a review of the sufficiency of a s.300 reply, else s. 9(4) would be rendered redundant.

The board, in its deliberations, further analyzed the issue as to whether the s.300 request was made properly. The board finds that the request made by the Complainant was directed to the proper party, it was made in written form, and it was clear in its query, albeit possibly not in the form prescribed by the municipality. The board noted that MRAC s.51 specifies an agent may not file a complaint or act for an assessed person unless the taxpayer has prepared and filed with the clerk or administrator an Assessment Complaints Agent Authorization form set out in Schedule 4. In the present matter, an agent authorization form was executed. The board reviewed Schedule 4 ss.5 which states, *I understand that this authorization does not act as an authorization of agency for the purposes of s.299 or 300 of the Municipal Government Act.* The board notes that this clause may serve to negate the agency authorization form for the purpose of a s.300 request.

The board notes that the municipality *may* provide an assessed person with a summary of the assessment through an internet website that is readily accessible to the assessed person pursuant to s.27.5(1)(c) of MRAT. The Respondent advised the board that information in response to a s.300 request was available on the City of Edmonton website. The board finds that, pursuant to s.27.5(1)(c), website dissemination of information pursuant to a s.300 request is indeed acceptable.

Lastly, it is noted that the Ministerial compliance review as enumerated in MRAT s.27.6, is not necessarily correlated with an assessment complaint. Hence, MRAT s.27.6 refers to the request by *an assessed person*. In contrast, MRAC is intended to apply in the course of a hearing as it specifically refers to the request by a *complainant*.

As to what is necessary for the satisfaction of a s.300 reply, the board reviewed MGA s.300(1.1). The board further reviewed s.27.1 and 27.3 of MRAT, which provides definitions for assessment items and explains key factors and variables of the valuation model applied in preparing the assessment of a property.

The board notes that the Complainant provided no legislation by which to persuade the board that *sales comparables* would be a *component or variable of the valuation model* applied in preparing the assessment of the property or a necessary component of a summary of an assessment. The board finds that the above legislation does not reference *sales comparables*.

The board notes that sales comparables are typically used by the Respondent, during the course of a hearing, to defend an assessment. The board further noted that the municipality relies on mass appraisal. The municipality did make available to the Respondent a volume of title transfers which were available by way of internet disclosure. Finally, the board noted that sales comparables were not a delineated item in the relevant legislation.

In view of the foregoing, in the circumstance, the board is not persuaded that a s.300 request would necessitate provision, by the municipality, of discrete sales comparables. As a result, MRAC s.9(4) is not triggered and the board is not precluded from hearing evidence regarding the Respondent's sales comparables. Finally, the board notes that it was unclear whether adjustment information was provided; however, the Complainant did not request a consequence for the omission in the provision of this information but in any event, the board did not rely on the information pertaining to such evidence from the Respondent, hence there was no evidence to preclude on this ground.

Preliminary Matter #3: The Complainant's rebuttal evidence is not admissible as it is not proper rebuttal evidence

Position of the Respondent

The Respondent brought a preliminary application to exclude the Complainant's Rebuttal Evidence (C-2, Tabs 2, 3, 4, and 5), arguing that the evidence was not truly rebuttal evidence but rather an extension of the Respondent's evidence contained in their disclosure. It was the position of the Respondent that there exists no reason by which the Complainant could not have included all of their documentary and testimonial evidence within their disclosure, consistent with the provisions under *s.8* and *s. 9* of MRAC.

Position of the Complainant

The Complainant argued that the rebuttal evidence was clearly in response to the Respondent's disclosure evidence.

Decision of the board as regards Preliminary Matter #3

The board reviewed the materials contained in C-2.

a. The board noted that Tab 2 contains letters from the Complainant requesting information pursuant to a s.300 request and various replies from the City of Edmonton. The board finds that this evidence is, indeed, rebuttal evidence as the Complainant could not have predicted that the Respondent would have denied that the Complainant made a s.300 request, as submitted by the Complainant. As a result, this evidence is filed in reply to the Respondent's evidence, and is therefore admissible as rebuttal evidence.

b. The board noted that Tab 3 contains copies of land title searches of properties deemed by the Complainant to be multi-lot parcels as well as copies of property sales provided on the City of Edmonton website. As this is fresh evidence and not filed in reply to the Respondent's evidence, the board finds that this submission should be expunged from the record.

c. The board noted that Tab 4 consists of *case law* and an *advisory bulletin*. In addition, this bundle contains a copy of title for the subject property, and a City of Edmonton map indicating utility connection locations. The board scrutinized the contents therein and finds that the inclusion of case law and an advisory bulletin is proper rebuttal evidence and therefore admissible. However, the board finds that the pages titled Statement of Position of Water and/or Sewer Line along with the adjoining map (C-2, Tab 4, pages 43 – 52) is new evidence, and therefore inadmissible.

d. Finally, the board reviewed C-2, Tab 5, and finds that it contains an enlargement of the utilities location map referenced in the above section. As this is fresh evidence, the board finds this submission inadmissible.

MERITS OF THE HEARING

SCHEDULE OF ISSUES AS PRESENTED BY THE COMPLAINANT

1. The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta Regulation 220/204.
2. The use, quality, and physical condition attributed by the municipality to the subject property are incorrect, inequitable and do not satisfy the requirement of Section 289(2) of the Municipal Government Act.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.
4. The assessment of the subject property is in excess of its market value for assessment purposes.
5. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
6. The information requested from the municipality pursuant to *Section 299 or 300 of the Municipal Government Act* was not provided or was so expensive that the costs impeded access to information.
7. The classification of the subject premise is neither fair, equitable, nor correct.
8. The influence adjustment factors applied to the assessment have been inequitably applied to the base rate.
9. An inadequate allowance was applied for land-use restrictions and caveats.
10. The size/shape/topography of the subject property has not been adequately adjusted for in the assessment.
11. The impact of environment remediation costs and associated stigmas has not been adequately captured in the assessed value.
12. This property reflects a Double Taxation as the value of this parcel has already been captured in the assessment of the parent parcel.

ISSUES

The Complainant presented twelve issues (C-1, page 3) as the subject of this complaint. At the hearing, the Complainant abandoned issues number 9, 11, and 12. Issue numbers 1, 6, 7, 8, and 10 are substantially addressed in the section entitled Preliminary Matters, while the remaining issues 2, 3, 4, and 5 may be consolidated as :

1. Is the subject property correctly treated as a single parcel of land?
2. Does the assessment reflect market value?
3. Is the assessment fair and equitable?

LEGISLATION

***Matters Relating to Assessment Complaints Regulation* AR 310/2009 (MRAC);**

S. 8(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:*

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;

S.9(2*) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

S.9(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.*

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

1(v) *"parcel of land" means*
(i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;

(ii) where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;

(iii) a quarter section of land according to the system of surveys under the Surveys Act or any other area of land described on a certificate of title;

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.

S. 300 *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;

(b) the size of the parcel of land;

(c) the age and size or measurement of any improvements;

(d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;

(e) 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) if it is satisfied that necessary confidentiality will not be breached.

S. 467(2) *An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).*

S. 299 *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. 301 *A municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.*

S. 285 *Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.*

Issue #1: Is the subject property correctly treated as a single parcel of land?

Position of the Complainant

The Complainant submitted that the 21 roll numbers belonging to the respective properties ought to be consolidated under one (1) roll number. In particular, the Complainant submitted that, because the properties on the 21 roll numbers are essentially *one single lot parcel*, the board ought to cancel the 21 roll numbers and issue one (1) new roll number which would encompass the 21 lots of land. As an alternative, the Complainant submitted that the Board should treat, for assessment purposes, the multiple lots as a single-lot parcel, rather than a multi-lot parcel. This would have a downward impact on the subject's assessment value because the unit value on a small parcel is greater than the unit value contained within a large parcel.

The Complainant noted that the value of the subject property should reflect the characteristics and physical condition of that property as at December 31 of the year prior to the year in which a tax is imposed (2009), pursuant to MGA s.289(2)(a). In this regard, the Complainant argued that the area of the subject property was a major characteristic that had not been factored into its assessed value.

The Complainant submitted that in ascertaining what is a *parcel of land*, the board should have reference to MGA section1(1)(v)(iii) wherein a parcel of land is defined as (iii) a *quarter section of land according to the system of surveys under the Surveys Act or any other area of land described on a certificate of tile* and not section (1)(v)(i) in which a parcel of land is defined as land in which *there has been a subdivision any lot or block shown on a plan or subdivision that has been registered in a land titles* office as argued by the Respondent. By adhering to the former definition of a parcel of land, the Complainant argued that the board should consider the lands that are enumerated in the 21 rolls as a single parcel of land as opposed to 21 individual lots. Finally, the Complainant noted that the 21 lots are described in a single *Certificate of Title* (C-1, pages 8-10 and 37-39) and therefore must be considered as being *a single parcel* of land and assessed accordingly.

In further support of their position, the Complainant submitted the Assessment and Property Tax Policy Unit Update (Local Government Services Division, Advisory Aspects, Fall 2001, presented in C-2, Tab 4), in which an opinion was provided regarding the definition of a parcel

of land. In this bulletin, the ASB provided an opinion as to the application of MGA s.1(v)(iii) as follows:

> *Over the past few months, several municipalities and assessors have enquired about what, exactly, constitutes a "parcel" of land for assessment purposes. …It is a normal practice to refer to this title as containing one legal description since all of the lots are referred to in the same legal description….The phrase in s. 1(v)(iii) is, in the ASB's opinion, more of a catch-all definition. Pursuant to this part, a certificate of title that describes an area of land by referencing multiple lots would clearly fit within this definition. The reference to "any other area of land" suggests that this subsection is intended to catch that which is not caught by the preceding definitions. The definition of a parcel of land should give an assessing authority the flexibility to assess a multi-lot title as one piece of property. If indeed the title cannot be separated without further subdivision there should, in the ASB's opinion, be one assessment placed upon the property as it is a "parcel in trade"* (C-2, Tab 4).

The Complainant also argued that if the subject lot is searched in the City of Edmonton website, the website reflects, in part, a map showing all 21 lots collectively (C-1, page 33). In addition, the Complainant provided examples of other multi-lot parcels that have a single roll number (C-1, pages 11 – 18), suggesting that the board use these comparables as a precedent in that the City of Edmonton applied a single roll number to these particular multi-lot parcels.

Position of Respondent

The Respondent takes the position that the board does not have the jurisdiction to consolidate or assimilate the multiple roll numbers and, for the purpose of assessment, should not alter the Respondent's treatment of the subject property in terms of multiple rolls. The Respondent submitted that the MGA s.1(1)(v)(iii) is applicable to the current circumstance and in support of their position, cited applicable case law.

In a decision of the *Municipal Government Board*, namely *Brousseau v. Bonnyville Beach* (Summer Village) 2001 CarswellAlta 2277, two lots on which were located various improvements used for summer cottage purposes, constituted the property under appeal. These lots were held under a single *Certificate of Title*. The issue was whether the subject parcels should be assessed as one property or two properties. In this case the MGB noted that the MGA s.1(1)(v)(i) states that a parcel of land means (i) *where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office*. The MGB concluded that each lot is a parcel of land for assessment purposes.

In *Stampede City Farming Ltd. v. Calgary (City), 2003 Carswell Alta 2344*, the matter to be decided was whether, for assessment and taxation purposes, there should be the equivalent of a single 5.08 acre parcel, or parcels containing 2.71 acres and 2.37 acres. The MGB reviewed the arguments presented on both sides.

In this case, the Complainant, relying upon *section (1)(v)(iii) of the MGA*, argued that the lands should be assessed as a single parcel in that they were described on a single certificate of title.

The Respondent argued that the land under appeal is made up of two legal parcels of land and that each parcel must be assessed independently even though they were on a single certificate of title.

The MGB agreed with the arguments of the Respondent, and found that the subject properties fell squarely within the meaning under section 1(1)(v)(i) and therefore must be considered as two separate parcels of land for the purpose of property assessment and taxation. The MGB specifically noted that the 1st definition is applicable in three circumstances, and in particular, in circumstances where a subdivision has occurred.

As regards the complaint under review, the Respondent provided evidence to the board that the subject properties are legally described as individual lots, as has been the case since approximately 1910 (R-2, page 61).

Decision of the board as regards issue #1

It is the decision of the board to accept the Respondent's position that the 21 lots of land are rightfully treated on individual roll numbers for purposes of assessment. In this regard, the board finds that enabling legislation does not grant the board the jurisdiction to consolidate or assimilate the assessment rolls.

Issue #2: Does the assessment reflect market value?

Position of the Complainant

The Complainant provided one sales comparable (C-1, page 19 and 29), noting that this property had a Time Adjusted Sales Value Per Square Foot (TASP) of $55.66 per square foot less the value of the improvement (casino) (C-1, page 19 and pages 28 – 29). They argued that this sale price should be applied to the lot under Roll No. 3201712, the master or cross-reference file upon which the assessment values of the other 20 lots should be taken and which would result in a revised assessment for the properties as set out in Schedule A.

Position of the Respondent

The Respondent submitted that the Mass Appraisal Process was utilized which has regard for size, location, study area, and servicing. From this process, a base rate of $48.90 per square foot was derived (R-2, page 58) which, after adjustments, yielded an assessment of $1,661,853.00 (R-3, page 11) for a parcel of land measuring 9,999.35354 square feet which translates to $166.196 per square foot. Adding to this figure a depreciated value of $18,421.00 for the improvements, a total value of $1,680,000 (R-2, page 96) is computed.

The assessment values for the remaining twenty lots are presented in Schedule A.

A Sales Comparison chart (R-3, page 15, seven sales comparables) was provided by the Respondent which reflected Time Adjusted Sales Values of, 1) $287.43, 2) $222.01, 3) $175.10, 4) $331.48, 5) $154.26, 6) $188.71, and 7) $144.23. Of these sales comparables, the board accepted sales 1, 3, and 6 as exhibiting characteristics similar to that of the subject property, while the other sales comparables were not included in the City's website disclosure as

referenced in the decision of the board under *Preliminary Matters*. Nevertheless, the remaining sales data supported a value of $166.196 per square foot as determined in the Mass Appraisal Model, thus fully supporting the assessed value of $1,680,000.

Decision of the board as regards issue #2

The board finds that the market value of the subject property is supported by sales comparables of small lots which exhibit similar characteristics to that of the subject property.

Issue #3: Is the assessment fair and equitable?

Position of the Complainant

The Complainant is of the opinion that the subject is only one lot of a much larger parcel and should be assessed in a manner similar to other large parcels in the downtown core (C-1, page 21). In support of this position, the Complainant provided three land value equity comparables of large parcels in the downtown core, noting that, on average, these comparables had an assessment of $37.69 per square foot whereas the subject had an average assessment of $167.40 per square foot. By treating the subject and the remaining 20 lots as one large parcel, the Complainant argued that the subject property is of similar size range and is in a similar location to the comparables, and therefore should reflect a similar assessment value per square foot. This would result in revised assessments as set out in Schedule A.

The Complainant did note that while the equity comparables appeared to have different land zoning from the subject (i.e., comparable #1 had a zoning of DC2), the effective zoning for the 3 comparables is CSC, similar to that of the subject property (C-1, page 23 and 35).

The Complainant asserted that the taxpayer is entitled to the lower of the *correct market value or the equitable value* by relying on a decision of *Bramalea Ltd. v. British Columbia*, (Assessor of Area No. 9-Vancouver) (1991) 76 D.L.R. (4th) 53 (B.C.C.A.) which recognized the right of a taxpayer to receive equitable treatment.

Position of the Respondent

In support of the assessment, the Respondent provided a total of 30 Equity Comparables (R-3, page 16), twenty of which were small lot comparables, while ten were large lot comparables. On average, the small lot equity comparables reflected an assessment of $159.99 per square foot while the large lot comparables were assessed at $160.00 per square foot. All of the equity comparables were within the area of the City designated as the downtown core in contrast, according to the Respondent, to several of the Complainant's comparables which were marginally outside the downtown core. In this regard, the Respondent provided a map of the City clarifying the comparables' locations within the downtown core (R-3, page 41).

The Respondent disagreed with the Complainant's position that the taxpayer should have the lower of *market value* or *equity*. The Respondent submitted case law that stated that, where there is a clear conflict between *equity* and *market value*, the *latter* should prevail. In this regard, the Respondent relied upon *Bentall Retail Services Inc. v. Vancouver* (Assessor) Area #09 [2006] B.C.J., which clarified the interpretation of *Bramalea*, as it related to equity and range of equitable values (R-4, page 8).

The Respondent further relied on a decision of the *Alberta Court, 697604 Alberta Ltd. v. Calgary* [2005] A.J. No. 861, wherein the Alberta Court of Queen's Bench stated as follows:

> "…*where there is a conflict between the actual market value and the factors set out in section 12 (of the Regulation), the market value as defined by the Act should prevail"* (R-1, page 9).

Decision of the board as regards issue #3

The board places considerable weight on the Respondent's submission of thirty properties which exhibit characteristics similar to that of the subject property and have assessments per square foot which do support the assessment of the subject property, and as a result, finds the assessment to be fair and equitable.

DECISION

It is the decision of the board to confirm the assessment of the subject property for 2010 at $1,680,000.

In addition, it should be noted that the board's decision of confirmation also applies to the Roll Numbers as presented in Schedule A.

REASONS FOR THE DECISION

The Complainant requested that the board consolidate parcels that are enumerated on 21 Assessment Rolls into one single Assessment Roll. In support of their request, the Complainant provided examples of other multi-lot parcels that have a single roll number (C-1, pages 11 – 18) and suggested that the board use these comparables as a precedent, indicating that the City of Edmonton applied a single roll number to these particular multi-lot parcels. The board noted that at least seven (7) of these lots were of one lot and a portion of the adjoining lot, and in each case the adjoining lot would be of little value because of its diminished size *unless it were appended to the full lot.* The remaining lots were of 2 to 5 contiguous lots without mention of improvements which could influence any decision on the part of the assessor to assess the property *as one lot*. Therefore, the board was not persuaded by this evidence.

The board finds that the 21 assessments do reflect 21 parcels of land and therefore must be treated, *for assessment purposes*, on separate assessment rolls. The board is persuaded by the Respondent's argument that the subject property falls under *s. 1(1)(v)(i) of MGA* and not under *s. 1(1)(v)(iii) of MGA*, which is a *catch-all* clause and does not apply to this particular circumstance. Further, the board is not persuaded by the Service Advisory Bulletin, because it is a legal opinion based on a question of law which is at variance with the question before the board in this particular case.

The board finds that its enabling legislation does not grant the board the jurisdiction to consolidate or assimilate assessment rolls (s. 460 – s. 467 of the MGA). However, and in any event, the board finds that the Complainant did not establish that the Respondent's treatment of the subject properties as twenty-one separate rolls is incorrect.

As regards market value, the Complainant is of the position that the entire 21 lot parcel should be assessed as one parcel and to that end, provided legal argument as well as sales and equity comparables in support of that argument. The Complainant presented all 15 of their sales comparables as multi-lot sales which indicated the market value of the subject multi-lot parcel to be $55.66 per square foot (C-1, page 18). However, the Complainant did not provide sales comparables for individual lots. Similarly, equity comparables were presented for three large parcels of land but none was provided for small single lot parcels (C-1, page 21). The board was not persuaded by this evidence in that the square footage of the comparables was considerably different from those of the subject property.

The Respondent's evidence, while limited to only three sales comparables, provide strong support for the assessment of the subject property. As well, 30 equity comparables, 20 of which were very similar in area to that of the subject lot, provide support for the assessed value.

It is the board's opinion that the Complainant failed to prove that a reduced assessment was warranted as their *market* and *equity* comparables did not properly reflect the size and attributes of the subject property. In any event, the board finds that the assessment of the subject property is supported by the Respondent's sales comparables (small lots which exhibit similar characteristics to that of the subject property) and its equity comparables. As a result, the board finds that the assessment of the subject does reflect market value as of the valuation date.

DISSENTING DECISION AND REASONS

No dissenting opinion.

Dated this 30th day of July 2010 A.D. at the City of Edmonton, in the Province of Alberta.

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Presiding Officer

CC: MUNICIPAL GOVERNMENT BOARD
672884 ALBERTA LTD.