ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 816/11

Altus Group Limited
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 22, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
10196296	10141 13 AVENUE NW	Plan: 1024252 Block: 20 Lot: 3	$7,721,000	Supplementary New	2011

Before:

Dean Sanduga, Presiding Officer
Dale Doan, Board Member
George Zaharia, Board Member

Board Officer: Segun Kaffo

Persons Appearing on behalf of Complainant:

Andrew Izard, Senior Consultant – Altus Group
Robert Brazzell, Senior Director – Altus Group
John Trelford, Altus Group
Jordan Nichol, Analyst – Altus Group

Persons Appearing on behalf of Respondent:

Len Handel, Assessor - City of Edmonton
Tanya Smith, Legal Counsel, City of Edmonton Law Branch

PROCEDURAL MATTERS

[1] Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board members stated that they had no bias on this file.

PRELIMINARY MATTERS

[2] Initially, Legal Counsel for the Respondent raised a preliminary matter with regards to the "agent authorization". Upon invitation by the Complainant for a very brief exchange of information, the Respondent withdrew the preliminary matter.

[3] The Respondent raised a concern regarding the inclusion of 2012 assessment information in the Complainant's rebuttal, stating that the Respondent had not disclosed any information about the 2012 assessment and therefore it could not be rebutted. When this issue was first raised, the parties were told that we were dealing with a 2011 supplementary assessment. However, upon presentation of the Complainant's rebuttal document, the 2012 assessment became a matter of discussion. The parties were told that if the 2011 assessment complaint had been completed in a timely manner, the 2012 assessment would not even have been available. Therefore, for the purposes of this complaint, the 2012 assessment does not exist. There was no further reference to the 2012 assessment.

BACKGROUND

[4] The subject property, located in South Edmonton Common with a municipal address of 10141 – 13 Avenue NW, is a 136,735 square foot home improvement warehouse comprised of 123,069 square feet of retail space and 13,666 square feet of cold storage space. As at December 31, 2010 (the condition date of the subject property for the 2011 assessment), the improvement was 40% complete, with the resulting total assessment of $20,106,000. This assessment was comprised of land at $17,515,813 plus $2,590,357 for the improvement deemed to be 40% complete. As at June 1, 2011, the improvement was 100% complete, resulting in a supplementary assessment in the amount of $7,721,000 which is the subject of this complaint.

ISSUE(S)

[5] The issues are:

a. Is the 2011 supplementary assessment too high when comparing the total 2011 assessment of the subject property, inclusive of the supplementary assessment, to assessments of similar properties?

b. Is it appropriate to value the subject property on the cost approach when the normal valuation for this type of property is the income approach?

LEGISLATION

[6] The ***Municipal Government Act*, RSA 2000, c M-26** reads:

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. 313(1) If a municipality wishes to require the preparation of supplementary assessments for improvements, the council must pass a supplementary assessment bylaw authorizing the assessments to be prepared for the purpose of imposing a tax under Part 10 in the same year.

s. 313(2) A bylaw under subsection (1) must refer

a) to all improvements, or
b) to all designated manufactured homes in the municipality.

s. 313(3) A supplementary assessment bylaw or any amendment to it
applies to the year in which it is passed, only if it is passed before May 1 of that year.

s. 314 (2) The assessor must prepare supplementary assessments for other improvements if

a) they are completed in the year in which they are to be taxed under Part 10,
b) they are occupied during all or any part of the year in which they are to be taxed under Part 10, or
c) they are moved into the municipality during the year in which they are to be taxed under Part 10 and they will not be taxed in that year by another municipality.

s. 314(3) A supplementary assessment must reflect

a) the value of an improvement that has not been previously assessed, or
b) the increase in the value of an improvement since it was last assessed.

s. 314(4) Supplementary assessments must be prepared in the same manner as assessments are prepared under Division 1, but must be prorated to reflect only the number of months during which the improvement is complete, occupied, located in the municipality or in operation, including the whole of the first month in which the improvement was completed, was occupied, was moved into the municipality or began to operate.

POSITION OF THE COMPLAINANT

[7] The Complainant argued that the subject property is a typical discount warehouse, and that there are many comparable properties that are valued on the income approach. It is the position of the Complainant that in utilizing the cost approach to value of the subject property, the Respondent has suggested that this is a "Special Purpose" property, a position that the Complainant does not agree with. This disagreement is "*based both on an equitable*

measurement of this use, and the treatment of other very similar locations suggesting that this is not a "Special Purpose" property (Exhibit C-1, page 6).

[8] The Complainant argued that the value of the subject property did not exceed the original 2011 assessment of $20,106,000 as calculated by the Respondent. Consequently, there should not be any supplemental assessment, or the supplemental assessment should be "$0".

[9] The Complainant stated that the rental rates applied to properties such as the subject ranged from $10.00 to $11.50 per square foot. *"Thus the value of the improvements were already captured in the annual assessment of this property, as the Supplemental + the Annual exceeds the market value for the completed and improved property based on the market conditions as of July 1st"* (Exhibit C-1, page 9).

[10] In support of this position, the Complainant provided fourteen rental rate comparables of similar properties located in shopping centres throughout the City. Four of the comparables are located in South Edmonton Common and are assessed using rental rates ranging from $10.00 to $11.50 per square foot. The remaining ten comparables are located throughout the City with rental rates that are at either $10.00 or $11.00 per square foot. The properties in South Edmonton Common differ from the other properties in that the capitalization rate for South Edmonton Common properties is 7.5% while the remaining properties are assessed with a capitalization rate of 8.0%. All of the comparable properties, except for one, exceed one hundred thousand square feet of retail space. The one exception is considered comparable at 92,795 square feet. The subject property has 123,069 square feet of retail space (Exhibit C-1, page 34).

[11] The Complainant argued that even the original assessment of the subject property at $20,106,000 was excessive. To support this argument, the Complainant provided a pro forma using the typical parameters used by the Respondent in assessing these types of properties, and applying a rental rate of $10.00 per square foot, the same rate as applied to all other home improvement stores, as is the subject. This resulted in a value of $15,997,000 (Exhibit C-1, page 6), well below the original assessment of $20,106,000.

[12] In providing several court and Assessment Review Board decisions (Exhibit C-2, 114 pages), the Complainant held that "all emphasized that whether it is the Cost Approach, the Income Approach, or the Direct Sales Comparison Approach, the end result must be a reasonable reflection of market value; which in the Province of Alberta is defined by the Act in section 1(1)(n) *"market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if sold on the open market by a willing seller to a willing buyer* (Exhibit C-1, page 6).

[13] It is the position of the Complainant that *the assessment is not intended to capture value to the owner, but rather the market value of the property based upon a willing buyer, willing seller relationship* (Exhibit C-1, page 7). In a British Columbia Supreme Court decision in *Swan Valley Foods Ltd. v. British Columbia (Assessment Appeal Board),* the Court wrote:

> *"Apparently, as it could find no alternatives, the board re-affirmed the replacement-cost as "the best available indicator of actual value" without a scrap of evidence to suggest that the replacement-cost represented the "exchange" or "actual" worth of the property. This was an error in principle"* (Exhibit C-1, page 7).

[14] In arguing the assumption that the Respondent had deemed the need for a supplemental assessment based on the improvement being a "special purpose" building, the Complainant argued that the construction of the improvement "*should be investigated to determine if they have limited conversion potential into a use different than their present use, or do the improvement(s) have special features which prohibit, or restrict the utility of the structure"* (Exhibit C-1, pages 7 & 8).

[15] To demonstrate the inequity of the assessment of the subject property, inclusive of the supplemental assessment of $7,721,000 (the subject of this complaint), for a total of $27,827,000, the Complainant provided a pro forma using the same parameters applied by the Respondent to similar properties to determine what the rental rate would have to be in order to arrive at the assessed value. This required rental rate ended up being $17.43 per square foot, far exceeding the $10.00 to $11.50 per square foot range applied to all the other similar properties (Exhibit C-1, page 19).

[16] Based upon the position that, when compared to similar properties, the original assessment captured the completed value of the subject, the Complainant argues that there is no need for a supplementary assessment. Therefore the Complainant requested the Board to reduce the 2011 supplementary assessment to $0.

POSITION OF THE RESPONDENT

[17] The Respondent included the "2011 Realty Supplemental Assessment Bylaw" (bylaw number 15568) in the assessment brief (Exhibit R-1, pages 4 – 7). The passing of this bylaw is permitted pursuant to MGA s 313. *The purpose of this bylaw is to provide for the supplementary assessments for all improvements for the 2011 taxation year*.

[18] The bylaw at point number 5) states that "*Subject to the provisions of section 314 of the Act, the assessor must prepare supplementary assessments: …. iii) reflecting the value of the improvement that has not been previously assessed, or the increase in the value of an improvement since it was last assessed"* (Exhibit R-1, pages 5 & 6).

[19] The Respondent provided a fact sheet for the subject property, identifying the value of the components that resulted in the original 2011 assessment of $20,106,000. As at December 31, 2010, the improvement was deemed 40% complete for a value of $2,590,357. The land was assessed at $17,515,813, and this added to the value of the improvement equaled the $20,106,000 assessment. As at May 31, 2011, the improvement was 100% complete, causing the supplementary assessment. As per MGA s 314 (4), the supplementary assessment was prorated on the basis of $7/12^{th}$ of the $7,721,000 supplementary assessment, or $4,503,917 upon which a tax would be imposed. (Exhibit R-1, page 8)

[20] The Respondent advised that the original assessment of $20,106,000 had been confirmed by a CARB in a decision dated December 15, 2011 (Exhibit R-1, page 8). This decision was provided in its entirety to the hearing as Exhibit R-2.

[21] The Respondent provided two pages from the Marshall & Swift valuation manual. The first sheet addressed the "Calculator Method" of valuing properties based upon condition. In the case of the subject property, the Respondent classified the improvement as a "Warehouse Discount Store" falling into a "C good" category that showed a value of $56.95 per square foot (Exhibit R-1, page 18). The second sheet addressed "Qualities of Construction". Because of the

"better finish" of the subject property in the opinion of the Respondent, the quality scale assigned to the subject was "good" (Exhibit R-1, page 19).

[22] The Respondent provided a detailed report of the original assessment of $20,106,000 showing that the improvement was assessed at 40% (Exhibit R-1, page 20).

[23] The Respondent provided a detailed report of the finished improvements that included two canopies and the paved parking lot. The total value of the improvements as shown by this report amounted to $10,311,561 (Exhibit R-1, pages 21 & 22). By adding this amount to the land value of $17,515,813, this resulted in a final assessment of $27,827,000.

[24] The Respondent provided a sketch of the improvement that showed a size of 123,069 square feet for the building and a further 13,606 square feet for the areas covered by the two canopies (Exhibit R-1, page 24).

[25] The Respondent submitted the account details for a building permit issued to the property owner where the owner had provided an estimated construction value of $17,000,000 (Exhibit R-1, page 25) and stated that the Complainant had not provided a construction cost to the City.

[26] In support of the assessment of the improvements of the subject, the Respondent provided two improvement equity comparables of similar properties valued by the cost approach, as they too were not complete as at December 31, 2010. The assessments of the improvements of the comparable properties were $88.92 and $76.63 per square foot compared to the $75.41 per square foot assessment of the subject's improvements (Exhibit R-1, page 26).

[27] The Respondent provided some excerpts from the "Market Value & Mass Appraisal for Property Assessment in Alberta" wherein it is written that *the most appropriate method of assessing single family* properties *is the sales comparison method,* while for regional shopping centres, *the income method is the most appropriate if there is good income data and reliable capitalization rates can be developed. With respect to the assessments of improvements only, where they are newly constructed or partially constructed during part of a year, the cost approach is most appropriate. In mass appraisal, the cost approach, if correctly applied, provides stable, consistent estimates of value. It is especially useful for appraisal of property types, such as industrial and special purpose, for which sales and income data are scarce* (Exhibit R-1, pages 32 & 33).

[28] The Respondent requested the Board to confirm the 2011 supplementary assessment of the subject property at $7,721,000.

DECISION

[29] The decision of the Board is to reduce the 2011 supplementary assessment from $7,721,000 to $0.

Roll Number	Supplementary Assessment	New Supplementary Assessment
10196296	$7,721,000	$0

REASONS FOR THE DECISION

[30] The Board does not dispute the fact that the Respondent has the right to issue supplementary assessments for improvements that were not completed during the assessment year. This right is outlined in the Municipal Government Act (MGA) at section 313. Pursuant to the Act, the Respondent passed a Realty Supplemental Assessment Bylaw giving it the right to issue a supplementary assessment.

[31] However, the Board is of the position that the overall assessment, including the supplementary assessment, must reflect the values of similar properties where the values have been determined using appropriate approaches to value. The assessment must be a reflection of market value as defined in MGA s 1(1)(n) that states: "*market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if sold on the open market by a willing seller to a willing buyer.*

[32] The Board is persuaded by the Complainant's argument that utilizing a cost approach for the subject because it is under construction and ending up with an assessment that is much higher than those of completed similar properties using the same parameters, is contrary to Matters Relating to Assessment and Taxation Regulation 220/2004 section 2(c) that states: *An assessment of property based on market value must reflect typical market conditions for properties similar to that property.* In this case, the Complainant was able to demonstrate that by applying the same parameters used by the Respondent in valuing fourteen similar properties this resulted in a much lower total value for the subject than the total assessment that included the supplementary assessment.

[33] The Board acknowledges that there are three approaches to determining market value and that the Respondent is free to use whichever approach appears to be the most appropriate in the circumstance. The Respondent advised that all uncompleted improvements have been valued using the cost approach. However, if the cost approach results in an assessment which is widely at variance with assessments of similar properties using, in this case, the income approach, then the Board must question whether the cost approach was "correctly applied". Whatever approach to value is utilized, the resulting assessment *must reflect typical market conditions for properties similar to that property.* In the case of the subject property, given that the Board was provided with fourteen comparables of similar properties, it was clear that total assessment of the subject property did not reflect typical market conditions.

[34] The Board placed little weight on the equity comparables provided by the Respondent, since these assessments were prepared using the same cost approach as was used in valuing the subject. In absence of any evidence to the contrary, if the final total assessments of the comparables would be in the order of twenty-five percent greater than what the assessments would have been using the income approach, and there was compelling evidence that the assessments were excessive compared to the assessments of similar properties, as is the case with the subject, it would only mean that the assessments of these comparables did not *reflect typical market conditions for properties similar to that property* as mandated by Matters Relating to Assessment and Taxation Regulation 220/2004.

[35] The Board did not find any merit in the Complainant's argument that the subject property was valued as a "special purpose" property. Other than referencing this issue as an excerpt from an IAAO document, the Respondent never referred to this matter anywhere else in the disclosure.

[36] The Board placed no weight on the December 15, 2011 CARB decision on the subject property, since the issue in that complaint was the value of the land, while the issue in this complaint is the value of the improvement.

[37] The Board placed no weight on the Respondent's argument that by inserting the construction value of $17,000,000 into a building permit application, this indicated that the Complainant anticipated this value for the improvement. The Respondent offered no evidence as to the origin of this estimate. Was it based upon one or more construction bids or was it a guesstimate only to meet the requirement of the form that the owner was obligated to complete?

[38] The only issue in front of this Board is the value of the supplementary assessment issued by the Respondent. Although information was supplied by both parties as to the overall value of the subject property as completed, the Board was never asked to address this value, and therefore has no jurisdiction to make any decisions other than on the supplementary assessment.

[39] The Board is persuaded that by reducing the supplementary assessment from $7,721,000 to $0, the resulting assessment better reflects the typical market conditions for properties similar to the subject property.

DISSENTING OPINION AND REASONS

[40] There was no dissenting opinion.

Dated this 2nd day of March, 2012, at the City of Edmonton, in the Province of Alberta.

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Dean Sanduga, 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.

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cc: CAMERON CORPORATION