

Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***504148 Alberta Ltd., COMPLAINANT
(as represented by Altus Group)***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
R. Cochrane, BOARD MEMBER
J. Joseph, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER	200583250
ADDRESS	11700 Lake Fraser Dr SE
2014 ASSESSMENT	\$12,500,000
FILE No.	74064

This complaint was heard on 7th day of August, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *D. Mewha, Agent – Altus Group*

Appeared on behalf of the Respondent:

- *G. Jones, Assessor – City of Calgary*
- *T. Squire, Legal Counsel – City of Calgary*

Procedural or Jurisdictional Matters:

[1] Neither party objected to the Board as constituted to hear and decide on this matter.

[2] After the Complainant presented its evidence, the Respondent asked the Board to make a decision on whether the Complainant met onus, and therefore whether it was necessary to proceed with the Respondent's evidence. After a recess to discuss the request, the Board noted that the issue raised by the Complainant is complex and that the Board would like to hear the evidence of the Respondent. At this point in the hearing, the Board had not made any conclusions regarding the Complainant's evidence nor the weight it was assigning to various aspects of that evidence. The Board directed that the hearing proceed with the Respondent's evidence and Complainant's rebuttal to add further context and perspective to the issues.

Preliminary Matters:

[3] No preliminary matters were raised by either party.

Property Description:

[4] The subject property is located at 11700 Lake Fraser Dr. SE, and is occupied by Calgary Honda, an automotive dealership. The 6.33 acre (275,565 square feet) site is improved with two buildings, a 46,920 square foot (SF) single storey structure built in 2005 and an 18,202 single storey structure built in 2007. The property is zoned Commercial-Corridor 3 (C-COR 3).

[5] The property is assessed using the Cost Approach, with the land assessed using the following rates and formula:

3,000 SF @ \$130,00/SF
3,001 to 20,000 SF @ \$70/SF
Remainder @ \$12.00/SF

The improvements are valued using the Marshall & Swift Cost Estimating software. The result is an assessed value of the land at \$4,879,119 and an assessed value of the improvements at \$7,623,810, for a total assessment of \$12,500,000 (truncated).

Issues:

[6] The Complainant took the position that the 2014 Assessment is too high. The correct assessment should have the value of the improvements adjusted by -5% to remove the Goods and Services Tax (GST) that is included in the Marshall & Swift cost rates. The Complainant did not dispute either the assessed value of the land or the improvements as calculated, except that a -5% adjustment is required to remove the GST. The Complainant stated that the GST:

- does not represent the real assets of a property, therefore does not add value to the property;
- for commercial property, the GST is a flow through cost that is reimbursed to the owner, so is not an actual cost of construction;
- is not part of the consideration paid to the vendor, but merely collected by the vendor and remitted to the federal government.
- if included in the assessment is a tax on a tax, and therefore illegal.

Complainant's Requested Value:

\$12,130,000

Board's Decision:

[7] The 2014 Property Assessment of \$12,500,000 is confirmed.

Legislative Authority, Requirements and Considerations:

[8] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "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". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[9] The Board notes that the words "fair" and "equitable" are not defined in the Act or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

Issue 1: What is the correct assessment?**Complainant's Position:**

[10] The Complainant noted that in previous years it was the City's practice, when using the Cost Approach to determine an assessment, to adjust the resulting Marshall & Swift cost estimate by -5% to remove the GST that is included in the Marshall & Swift cost rates (page 39, Exhibit C1). The Complainant stated that this is the correct way to handle GST for commercial property because the GST is not a real cost to the owner constructing a commercial building, as in the vast majority, if not all cases, the GST is a flow through cost. The Complainant explained (with reference to various Canada Revenue Agency documents addressing GST presented in Exhibit C1 and C2) that the GST paid by the owner is a credit against GST collected by the owner, because the commercial owner is not the "end user" of the property (as is the case in a residential property). The Complainant argued that the owner is carrying on a retail car business, therefore collects GST on vehicles, parts and services sold on behalf of the federal government. Any GST paid by the owner is credited against the GST collected and the difference is either remitted to the federal government or the owner gets the difference reimbursed. Furthermore, the GST portion paid on construction does not translate into the asset value for the property. In other words, the GST paid does not result in any physical improvement on the property that can be assessed.

[11] The Complainant presented the 2005 Alberta Construction Cost Reporting Guide and its Interpretive Guide (Exhibit C1) to demonstrate that when costing linear property and machinery and equipment using this cost guide, GST is expressly to be excluded. The Complainant argued that it was its interpretation that this cost guide applies to all construction using the Cost Approach and therefore further supports the removal of the GST from the Marshall & Swift rates.

[12] The Complainant presented a number of court decisions in Exhibit C2 and in rebuttal addressed the Respondent's summary of case law (Exhibit R1). The Complainant noted that most of the cases presented by the Respondent related to residential properties, which are treated differently for GST purposes than commercial properties and are therefore not relevant to the issue before the Board. The Complainant argued that two court decisions are directly applicable to the subject issue. The Tolken Industries Ltd. v Big Lakes (Municipal District) [1997] A.M.G. B.O. No. 95 and [1998] A.J. No. 161 (page 2-15, Exhibit C2) recognizes that GST is similar to an input tax credit, which was the subject of these hearings. The New Brunswick (Executive Director of Assessment) v Food City Ltd. 2005 NBCA 65 sets out the test to determine if GST should be included as part of an assessed value and concludes that as GST is not an actual cost of construction it should not be part of an assessed value (page 22-30, Exhibit C2).

Respondent's Position:

[13] The Respondent stated that Section 285 of the MGA requires that an assessment be prepared annually, therefore how an assessment is prepared in previous years is irrelevant. The municipality made a slight change to the way the Marshall & Swift Cost estimates are done for the 2014 Assessment calculation by not applying a -5% adjustment to remove GST. The municipality believes this results in a better reflection of market value and is consistent with the way nine of the ten larger municipalities in the province (based on assessment values) treat GST. Furthermore, the municipality cannot be expected to know the tax status of each tax payer. It would be unreasonable for the municipality to consider tax status of each tax payer (i.e. whether or not they can claim GST credits) as part of the preparation of the assessment rolls.

[14] The Respondent presented the 2005 Alberta Construction Cost Guide and Interpretive Guide along with other documents, to support its position that the cost guides apply only to regulated property (i.e. linear property, machinery and equipment).

[15] The Respondent presented various documents addressing the calculation of GST and how it is applied in various circumstances. The Respondent argued that the application of GST is not as simple as the Complainant purports; there are various complexities in the GST regulations that result in not every property owner being eligible to be credited with GST paid. The assumption that all commercial property owners are eligible for a GST credit on the cost of construction is an oversimplification and is not supported by any evidence.

[16] The Respondent presented a calculation using twelve sales of industrial properties (page 118, Exhibit R1) to demonstrate that by including the GST in the Cost Approach Calculation, the assessed value more accurately depicts the sale price, although the difference is in the order of 1-2%.

[17] The Respondent presented a number of court decisions and previous Board decisions referring to the treatment of GST in assessment valuation, and argued that these all support the Respondent's position that GST is part of the cost of construction of a property and therefore properly included in an assessment valuation.

Findings of the Board

[18] The Board notes the Complainant's reference to the Montreal (City) v Sun Life Assurance Co. [195], [1952] 2 D.L.R. 81, [1951] W.N. (Canada PC) decision discussed in the Mitchell v. North Shore (Squamish Valley Assessor, Area No. 08) [2002] B.C.W.L.D. 497 decision (page 241-255, Exhibit R1). The reference sets out the court's preference for the various approaches to valuation of a property. The depreciated replacement cost method (the Cost Method) is the least preferred. The actual sale of the subject property is the best indication of value, followed by sales of identical or similar properties and then the Income Approach (which is also based on market data). The Board concurs with this characterization of approaches. In this case, there are essentially no sales of identical or similar or comparable properties, so by default, the Cost Approach is used. That said, the Cost Approach is the least accurate reflection of market value, with the only relationship to a market value being the substitution principle (which holds that a reasonable person will not pay more for an existing property than it would cost to create or construct an identical property, or a property of identical utility). This is at best a very tentative and indirect relationship to market value.

[19] The Board concurs with the Respondent that the references to excluding GST in the 2005 Construction Cost Guide refer specifically to regulated properties. This is further supported by Section 5(1) of Matters Relating to Assessment and Taxation Regulation (MRAT), which holds that the valuation standard for all non-regulated property is market value.

[20] The Complainant made a number of inferences during the presentation that the owner of the property (the tax payer) was the entity that owned and operated the car dealership (the occupant). The Complainant did not know the exact nature of this relationship or if this was a relationship between related parties. No evidence was presented to demonstrate the circumstances of the property owner regarding its GST status.

[21] The Board considered the analysis of the twelve industrial properties presented by the Respondent to demonstrate the impact of including or excluding GST in cost calculations to best reflect sale price. The Respondent did not know if the sales prices presented in this analysis included or excluded GST, which seem to be material to the analysis. For this reason, the Board puts little weight on this analysis.

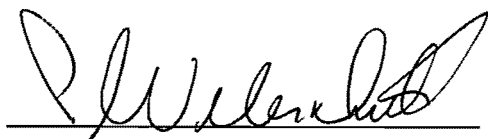
[22] Both parties presented a number of court and previous Board decisions. The Board finds that only the New Brunswick (Executive Director of Assessment) v Food City Ltd. 2005 NBCA 65 decision somewhat supportive of the Complainant's position. This decision refers to a request for leave to appeal by the Executive Director of Assessment of a decision of the Assessment and Planning Review Board (APRB) decision which excluded the Harmonized Sales Tax (HST) in applying a Cost Approach to a newly constructed property. The New Brunswick Court of Appeal did not address this matter *de novo*, but concurred that the decision of the APRB was reasonable and therefore did not find grounds to grant an appeal. Many of the references to this case made by the Complainant in argument are excerpts of the APRB decision in the court's decision. The Board puts limited weight on this decision.

[23] The issue put before the Board by the Complainant was simply that a -5% adjustment should be applied to the Marshall & Swift Cost estimate to take out GST. The Board's authority is clearly set out in Section 467(3) of the MGA, which states in part that an assessment review board must not alter any assessment that is fair and equitable. The Board recognizes that the Cost Approach is the least reliable approach to valuation, but is the "approach of last resort". While the Board heard considerable argument regarding the impact of GST on the assessed value (and much argument on whether the GST is an appropriate factor in the Cost Approach), the Board is not persuaded that the 2014 Assessment as calculated by the City does not reflect the market value of the subject. The Complainant did not dispute the value of the land component in the assessment, nor the use of the Marshall & Swift Cost software and the property characteristics used to derive the cost estimate of the improvements for assessment purposes. The Cost Approach using the Marshall & Swift Cost estimating software includes many input factors and the application of various modifiers and rates, many selected with some discretion, which add to the uncertainty of the resulting value. The change requested by the Complainant is modest and within the range of uncertainty when using the Cost Approach. The Board is not persuaded that a -5% adjustment to the final value of the improvements results in an assessed value that is more reflective of the market value of the subject property. The Board therefore has no basis on which to alter the assessment.

Board's Reasons for Decision:

[24] The Board confirms the 2014 Assessment of \$12,500,000. The Board is not persuaded that if a -5% adjustment is applied to the value of the improvements derived by using the Marshall & Swift Cost estimating software the resulting assessed value is a better reflection of market value. The Board notes that the Cost Approach is the least accurate of the valuation approaches and that the probable range of value of the subject property includes the assessment requested by the Complainant.

DATED AT THE CITY OF CALGARY THIS 2 DAY OF September 2014.



I. Weleschuk

Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. R1	Respondent Disclosure
4. C3	Complainant Rebuttal Disclosure

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

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Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Automotive Dealership		Market value	Adjustment for GST