

**NOTICE OF DECISION      NO. 0098 214/12**

CELTIC LAND DEVELOPMENT CORPORATION  
8 11824 - 109 STREET NW  
EDMONTON, AB T5G 2T8

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 September 5, 2012, respecting a complaint for:

<b>Roll Number</b>	<b>Municipal Address</b>	<b>Legal Description</b>	<b>Assessed Value</b>	<b>Assessment Type</b>	<b>Assessment Notice for:</b>
9965183	8 11824 109 STREET NW		\$1,878,000	Annual New	2012

*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:    CITY OF EDMONTON ASSET MANAGEMENT & PUBLIC WORKS

## **Edmonton Composite Assessment Review Board**

**Citation: CELTIC LAND DEVELOPMENT CORPORATION v The City of Edmonton,  
ECARB 2012-000224**

**Assessment Roll Number:** 9965183  
**Municipal Address:** 8 11824 109 STREET NW  
**Assessment Year:** 2012  
**Assessment Type:** Annual New

Between:

**CELTIC LAND DEVELOPMENT CORPORATION**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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### **DECISION OF**

**John Noonan, Presiding Officer**

**Darryl Menzak, Board Member**

**John Braim, Board Member**

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### **Preliminary Matters**

[1] When asked by the Presiding Officer, the parties indicated no objection to the composition of the Board. The Board members indicated they had no bias in the matter before them.

### **Background**

[2] The subject property comprises an airport hangar and services building located on 2.84 acres at the City Centre Airport, zoned MA, Municipal Airport. The building is owned by the Complainant while the land is owned by the City of Edmonton. The building owner leases the land from the City on a 15-year lease with two options to renew, each for a period of 15 years. As such, the property has a Fee Simple interest and a Leasehold interest. The Complainant and the Respondent agreed at the outset there was no issue with the assessment of the building. The 2012 assessment was prepared using the cost approach, viewing the subject as a special purpose property. The land value was established by market sales comparables.

### **Issue(s)**

[3] The Board considered the following issue:

Is the land assessment excessive given the Complainant has only a leasehold interest?

## **Legislation**

[4] The Municipal Government Act reads:

### ***Municipal Government Act, RSA 2000, c M-26***

s 1(1) (n) “market value” means the amount that a property, as defined in section 284(1) (r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

s 284(1)(c) “assessment” means a value of property determined in accordance with this Part and the regulations;

s 289(2)(b) Each assessment must reflect the valuation and other standards set out in the regulations for that property.

s 304(1)(c) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

<b>Column 1</b>	<b>Column 2</b>
<b>Assessed property</b>	<b>Assessed person</b>
(c) a parcel of land, an improvement or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Alberta or Canada or a municipality;	(c) the holder of the lease, licence or permit or, in the case of a parcel of land or a parcel of land and the improvements to it, the person who occupies the land with the consent of that holder or, if the land that was the subject of a lease, licence or permit has been sold under an agreement for sale, the purchaser under that agreement;

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.

***Matters Relating To Assessment and Taxation Regulation AR 220/2004***

s 2(b) An assessment of property based on market value must be an estimate of the value of the fee simple estate in the property

s 4(1)(a) The valuation standard for a parcel of land is market value

**Position of the Complainant**

[5] The Complainant filed this complaint on the basis that the 2012 assessment of the subject property exceeded its market value. There was no issue with the assessed value of the building that was owned by the Complainant. The primary issue related only to the value of the land that was owned by the Edmonton Regional Airports Authority (E.R.A.A). The Complainant stated that the building owner only owned a leasehold interest in the land. The initial leasehold interest was for a period of 15 years commencing April 1, 1998 and expiring March 31, 2013. There are two renewal options each for a further term of 15 years. The Complainant asserted the Lessee only owned a fraction of the bundle of rights that a fee simple interest owner normally possesses and as such they should each be responsible for the value of their respective interests. In essence this meant that the Lessee should only have to pay for the building and a reduced value for the Lessee's interest in the land as there were limitations with respect to the land and also any building improvements that they may wish to carry out. In support of this argument the Complainant provided the Board with a copy of the Land Lease, an Edmonton Airports Operation Policy and a Passenger Access Policy (Exhibit C-1).

[6] As additional support for a reduction in the assessment the Complainant also provided a copy of the Sales Agreement (C-2) wherein the original land lease agreement had been assigned to the Complainant effective May 1, 2008, the date the Complainant purchased the building and equipment and assumed the responsibilities imposed by the E.R.A.A.

[7] The Complainant also provided the Board with a chart summarizing 18 sales of industrial properties in Edmonton, to demonstrate that industrial property sales had taken place for similar sized parcels in various locations throughout the city (C-3). A copy of the land title certificate was provided for one of the sales (C-4). The land sales ranged in value from \$330,120 per acre to \$875,000 per acre and in 3 cases from \$24.04/ sq ft to \$58.86/ sq ft. The Complainant stated that the value of the land should fall in the \$300,000 to \$400,000/ acre range, at the low end shown by the sales, in recognition of only a leasehold interest, whereas the 18 sales provided all related to fee simple interests.

[8] In conclusion, and as additional support for a reduction in the assessment, the Complainant stated that the assessment on the subject property had increased from \$900,000 in 2009 to the current assessment of \$1,878,000. This indicated the subject's market value had more than doubled in 3 years, a questionable assertion.

### **Position of the Respondent**

[9] In defense of the assessment the Respondent provided the Board with a brief indicating that the subject property had been assessed on a cost approach basis (Exhibit R-1). With respect to the Fee Simple versus the Leased Fee Estate issue, the brief included a CARB decision relating to the same principle in respect of another property: in that appeal the Board found that *the CARB notes that "fee simple" is the standard for assessment in Alberta, and as such is the process properly applied in this matter.*

[10] In further support of this argument the Respondent referred the Board's attention to the MGA and the regulations and in particular to MRAT s 2 b) stating that *An assessment of property based on market value must be an estimate of the value of the fee simple estate in the property,...* MGA s 304(1) (c) dictates that when the assessed property is a parcel of land and the improvements to it, held under a lease from a municipality, the assessed person is the holder of the lease.

[11] The Respondent provided a chart of 16 equity comparables that were all located at the Municipal Airport and were assessed in a range from \$490,434 per acre to \$599,727 per acre. The subject is assessed at \$557,001 per acre and falls close to the middle of the range of all other airport property land assessments.

[12] As surrebuttal, the Respondent provided a chart of sales relating to similar-sized parcels of land located in the north-west industrial district (Exhibit C-2). The 9 sales were time adjusted to indicate land values ranging from \$382,951/ acre to \$719,112/ acre. The average was \$589,950/ acre and the median \$639,574/ acre, both of which support the subject assessment of \$557,050/ acre. The Respondent noted that all the sales presented by the Complainant had occurred in 2012, well after the valuation date of July 1, 2011 for the subject assessment.

[13] In conclusion the Respondent expressed empathy with the dilemma of the Complainant with respect to the leasehold interest issue, but there was nothing in the legislation to indicate that the value of the leasehold interest was the basis of assessment, nor was there any evidence before the Board to indicate the land value was incorrect.

### **Decision**

[14] After reviewing the evidence and arguments of the two parties, the Board confirms the 2012 assessment in the sum of \$1,878,000.

### **Reasons for the Decision**

[15] The Board finds the evidence of the Respondent to be more persuasive for the following reasons.

[16] The legislation dictates at MRAT section 2 (b) that the market value assessment of a property *must be an estimate of value based on the value of the fee simple estate in the property.* The Municipal Government Act at section 304(1)(c) clearly addresses the issue raised here: the

lease holder is the assessed person. There appears to be no legislation that covers the principle of apportionment as raised by the Complainant.

[17] The Board notes that the Respondent supplied evidence with respect to several other properties that were all located on the same airport lands and had been assessed on the same fee simple estate basis. The subject property fell reasonably close to the middle of the range and the Board finds that the subject property has been assessed equitably with other properties similar to the subject by way of legal status.

[18] The Board also notes the sales comparables presented by the Respondent, demonstrating vacant land had been selling at varying rates with average and median rates both above that assessed for the subject property. Although these sales were reported to be time adjusted and had no support data, they were not challenged by the Complainant.

[19] The Board was not persuaded by the rebuttal evidence of the Complainant with respect to the market sales provided as some of them included improvements in the form of warehouses and the Board was unable to determine the value that the improvements contributed to the total sale price. As such, these sales were less meaningful to the Board. As well, they were post facto to the valuation date.

### **Dissenting Opinion**

[20] There was no dissenting opinion.

Heard September 5, 2012.

Dated this 20<sup>th</sup> day of September, 2012, at the City of Edmonton, Alberta.

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John Noonan, Presiding Officer

### **Appearances:**

CELTIC LAND DEVELOPMENT CORPORATION

Chris Whelehan

Rob Speidel

for the Complainant

Cam Ashmore

Doug McLennan

for the Respondent