



## ASSESSMENT REVIEW BOARD

Churchill Building  
10019 103 Avenue  
Edmonton AB T5J 0G9  
Phone: (780) 496-5026

### NOTICE OF DECISION      NO. 0098 298/11

AEC International Inc.  
1120, 10201 Southport Road SW  
Calgary, AB T2W 4X9

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 October 20, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9995171	12408 62 Street NW	Plan: 0221247 Block: 5 Lot: 5	\$5,664,500	Annual New	2011

#### **Before:**

Steven Kashuba, Presiding Officer  
Howard Worrell, Board Member  
Brian Hetherington, Board Member

#### **Board Officer:**

Annet Adetunji

#### **Persons Appearing on behalf of Complainant:**

Cameron Hall, Director, AEC International  
Colin Lawson, Costplan Management Ltd  
Ryan Ford, AEC International

#### **Persons Appearing on behalf of Respondent:**

Darren Nagy, Assessor, City of Edmonton  
Cameron Ashmore, Barrister & Solicitor, City of Edmonton

## **PROCEDURAL MATTERS**

1. Upon questioning by the Presiding Officer, the parties present indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file. Upon the request of both parties, all evidence is to be received under oath.

## **BACKGROUND**

2. The subject property, located at 12408 – 62 Street NW, is a 12.9 acre heavy industrial raw land site located in Industrial Heights. Its location is locally known as the former Gainers meat packing site. The site was used for meat processing from 1907 until 1997. In May of 1998, Alberta Public Works Supply and Services (APWSS) became responsible for the site with some building demolition and disposal of property in due course.
3. The present owner, Premium Brands, acquired the entire south half of the former Gainers lands from APWSS in 1999. After selling part of the property, the owner retained the southeast portion of the site, intending to develop a 99,000 square foot food processing plant in 2006 on the north half of the remaining lands and sell the residual. However, geotechnical concerns associated with the property resulted in delays. The current assessment is \$5,644,500.

## **ISSUE**

4. Is the subject correctly and fairly assessed when taking into consideration the fact that the property was the former Gainers plant and stockyards, has environmental issues and cannot be developed without substantial work?

## **LEGISLATION**

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

*S. 289 (1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.*

*(2) Each assessment must reflect*

*(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*

*(b) the valuation and other standards set out in the regulations for that property.*

*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 An assessment of property based on market value***

- (a) must be prepared using mass appraisal,*
- (b) must be an estimate of the value of the fee simple estate in the property, and*
- (c) must reflect typical market conditions for properties similar to that property.*

## **POSITION OF THE COMPLAINANT**

5. It is the submission of the Complainant that the current assessment of almost \$5.7 million reflects a property in a developable state. However, the cost of converting the lands from what has proven to be a landfill site to a normal heavy industrial raw land site materially exceeds its present market value. As a result, a value of \$1 is requested until such time as circumstances, technology, applicable laws and market value dictate that the market value of the lands, once remediated, exceeds the minimum cost necessary to make the lands useable. Until that time there is no commercial use for, and no commercial value to, the subject lands (Exhibit C-1, pages 6 and 7).
6. In support of its position, the Complainant presented an analysis of the environmental state of the property, the costs necessary to make the land useful, and the risks involved in undertaking the remediation process. Once remediated, and by then applying the base rate derived from land exhibiting similar characteristics, it would be possible to arrive at a fair market value.
7. In particular, the Complainant argued that there is a common misconception that landfill issues are solely environmental issues; however, in this particular case the issue is also one of geotechnical considerations wherein a minimum strength is required to support the construction of a commercial building and access for heavy commercial traffic (Exhibit C-1, page 8).
8. The Complainant refers the Board to the Post Demolition Closure (Exhibit C-1, pages 113 – 152, Schedule H, Reid Crowther & Partners Ltd.) report that formed part of the sale documents in the 1999 APWSS transaction. In that report Reid Crowther stated that no further environmental investigation or site remediation be carried out and that based on the information currently available it is known that the use of the site as a meat packing plant had not resulted in contamination that would prevent future development on the site as a commercial/industrial property. From this report even the environmental experts had failed to fully understand the extent of the unsuitable fill at the site.
9. The Shelby Engineering Ltd. Report of February 5, 2007 (Schedule E, Schedule F, and Schedule G of Exhibit C-1, pages 72 – 112) detailed the condition of the land. This was accomplished by drilling and examining the core samples of 55 test holes and test pits (Exhibit C-1, Schedule A and Schedule B, pages 26 – 70) where the report concluded that *“the fill contained or consisted entirely of manure mixed with straw and what appeared to be animal hides in many of the test holes, often mixed with scrap metal and auto parts”* (Exhibit C-1, pages 11 and 12). Shelby Engineering went on to determine that the fill material was *“unacceptable for the support of pavements (or) grade supported building floor slabs.”* Added to this was the concern that the fill material might not even be sufficiently stable to support the equipment necessary to remove this unsuitable material

10. Based upon the Shelby Engineering Report (Exhibit C-1, pages 31, 32, the depth of fill was plotted from which it was determined that 126,664 cubic meters of unsuitable material would have to be removed. In September of 2007 it was concluded that the development of the site was not economically feasible (Exhibit C-1, page 16). According to the Complainant, as a result of geotechnical concerns, five of eight construction companies declined to bid on the construction of a single-storey manufacturing facility on the site. One construction company submitted a bid of \$12.3 million while another bid was \$17.3 million. One of the companies expressed a concern that the condition of the sub-grade and amount of materials that would have to be removed made it difficult to determine the final costs of construction (Exhibit C-1, page 17).
11. In 2011 Costplan Management Ltd. was retained to provide cost estimates for the necessary landfill remediation, identified in the Shelby Engineering Ltd report of 2007. Since the unsuitable material consisted of non-Specified Risk Material (non-SRM) as well as Specified Risk Material (SRM) that exhibited the presence of cattle hides and cattle parts, the risks of development on this site were increased. In part, the increased risk came about as a result of the costly necessity to transport the SRM material to an approved waste handling facility in Coronation, Alberta, which is a considerable distance from Edmonton (Exhibit C-1, page 20). The cost of transporting the non-SRM material as determined by Costplan is between \$10,678,169 and \$17,004,916, while the cost of transporting the SRM material is between \$11,710,158 and \$16,092,286 (Exhibit C-1, pages 21 and 22). A full analysis of the Site Reclamation Cost Study is provided by Costplan Management Ltd. in Schedule K (pages 164 – 187) of Exhibit C-1.
12. A summary of two likely scenarios for site reclamation of non-SRM material is provided by Costplan Management Ltd., to a compost site in Winterburn, ranging in value from \$11 million (Exhibit C-1, pages 169 - 171) to \$17 million (Exhibit C-1, pages 172 – 174), and two additional scenarios for the removal of SRM material of \$12 million (Exhibit C-1, pages 175 – 177) and \$16 million (Exhibit C-1, pages 178 – 180). In addition, an analysis is also provided in a case where the non-SRM material would be transported to Coronation (Exhibit C-1, pages 181 – 182).
13. By way of Rebuttal Evidence, the Complainant submitted the *Premium Brands Complainant's Rebuttal, October 12, 2011* in which the Complainant acknowledged that the Assessor proposed a reduction in the assessment amount from \$5,664,500 to \$4,531,500 (Exhibit C-2). This, in the view of the Complainant, supports their position that the subject site reflects the presence of extreme factors that negatively influence its value. In light of the assessor's submission and the agreed-upon facts that flow from the submission, under dispute is but one issue, that being a 20% reduction in the assessment amount. The Complainant is not in agreement with the Respondent as regards the recommended reduction in the assessment amount for an extreme attribute.
14. In support of a further reduction to the assessment amount, the Complainant relied, in part, upon the decision of CARB 1617/2011-P, pages 11 – 18) wherein a member of that Board provided a dissenting opinion, stating that, "...a reduction to every property regardless of the degree of the contamination would distort the assessment of all properties as the degree of contamination can range from negligible to complete, and this would create an inequitable and unbalanced valuation methodology..." (Exhibit C-2, page 16). However, in that very same CARB decision it is noted (Exhibit C-2, page 14) that, "...the Complainant's evidence included seven properties on Macleod Trail SW, all of which had been granted an influence reduction of 30 percent based on contamination. Information with respect to the extent of contamination of these properties was not forthcoming, nor was there information as to whether a demonstrable effect on market value was required before these properties..."

15. As a result, the Complainant pointed out that that very same Board, by majority decision, granted a reduction in the amount of a flat rate of 30% while a dissenting opinion was advanced that a Board should not limit a reduction to a particular flat rate but should rely on the evidence and consider a reduction upwards to 100%.
16. In addition, the Complainant made reference to Board Order: MGB 207/00 (Exhibit C-2, pages 19 – 32). In this case, the request for a reduction in the assessment amount was based upon the Income Approach to value. The Board found that the subject property;
  - 16.1. Was contaminated;
  - 16.2. Had an assessment that reflected the subject's market value in an uncontaminated state; and
  - 16.3. Had a capitalization rate of 18%, as opposed to the capitalization rate of 10.25% established by taking the mean and medium capitalization rates of six sales comparables which reflected the risk of the site contamination.

This resulted in the reduction of over 38% in the assessment amount.

17. The Complainant submitted that although the present circumstances are not totally environmental as noted in MGB 207/00, the geotechnical utility of the subject site may be addressed using similar principles. While the City's scheme of mass appraisal does not permit a range of values for differing degrees of influence, capping that influence at 20% effectively strips the adjustment of its equity and balance. It is the Complainant's submission that three adjustments of 15% each should be made to the subject property, lot size, shape, and topography adjustments. This would lead to a reduction of 45% to the market value of the property. However, in this particular case, the Complainant submits that the remedy of the geotechnical deficiency materially exceeds the value of the property.
18. It is the conclusion of the Complainant that the present cost of converting the subject site from a landfill site to a heavy industrial raw land site is at least 50% greater than its present assessed value. As a result, the current value of the subject land is \$nil, wherein the ownership of the land is a liability rather than an asset (Exhibit C-1, pages 24 - 25) and a value of \$1 is requested until such time as the lands do have some demonstrable commercial value.

### **POSITION OF THE RESPONDENT**

19. In support of the assessment of the subject property, the Respondent presented four sales comparables (Exhibit R-1, page 30) which occurred prior to the valuation date of July 1, 2010. The area of the subject property is 12.866 acres while the comparables range in size from 5.756 acres to 8.268 acres and the time adjusted sale price per square foot is \$10.41, while the subject is assessed at \$10.11 per square foot.
20. In addition to the sales comparables, the Respondent presented six equity comparables ranging in size from 4.82 acres to 24.3 acres (Exhibit R-1, page 35) taken from the same quadrant of the City. The assessments of the equity comparables averaged \$11.31 per square foot while the subject property is assessed at \$10.11 per square foot.

21. The Respondent did acknowledge that discussion with the Complainant had taken place resulting in a recommendation to reduce the assessment from \$5,664,500 to \$4,531,500. This reduction was based on the acknowledgment that the subject property did have some environmental concerns.
22. The Respondent provided the following (Exhibit R-1, page 7);

*“Attributes Used to Specify the 2011 Valuation”*

*Industrial Vacant Land*

- *Lot size*
- *Location*
- *Study/Market Area*
- *Servicing*
- *Other adjustments as required; i.e. shape accessibility, contamination, easement, remnant lot, isolation, restricted development, topography etc.*

*These deductions are applied in the following manner:*

<i>Minor</i>	<i>Up to 5%</i>
<i>Moderate</i>	<i>Up to 10%</i>
<i>Major</i>	<i>Up to 15%</i>
<i>Extreme</i>	<i>Up to 20%</i>

23. The Respondent confirmed that the 2011 assessment (Exhibit R-1, page 23) of \$5,664,500 contained an “Access/egress” reduction of 10% for access issue to the subject property from Yellowhead Trail.
24. Regarding the valuation of contaminated properties, the Respondent submitted the Appraisal Institute’s “Valuing Contaminated Properties” Report (Exhibit R-1, pages 37 – 41) which contained this phrase: *“Historically, the lack of marketability has not precluded the assessment of property for ad valorem taxation. For instance, specialty property, which by definition has no market, remains subject to taxation even though there are no buyers for the property”* (Exhibit R-1, page 38). Further, *“...there is a tendency to discount the unencumbered value based on costs related to remediating or isolating the environmental contamination”* (Exhibit R-1, page 39).
25. In response to the Complainant’s submission that the subject site contained manure which could be considered to contain Specified Risk Material (SRM), the Respondent submitted correspondence between a Veterinary Program Specialist with the Government of Canada and the City of Edmonton which stated that Fecal Matter and Hides are not considered to be SRM material (Exhibit R-1, pages 42 - 43).
26. To further support the current assessment, the Respondent submitted a report from the International Association of Assessing Officers entitled “Standard on the Valuation of Properties Affected by Environmental Contamination”. The report deals with physical contaminants, non-physical contaminants, and examples of special situations. Of particular note, according to the

Respondent, are Sections 4.1 Concepts of Value, and 4.2 Costs (Exhibit R-1, page 54) wherein Section 4.1 points out that there is a tendency to discount the value of a property based on costs related to remediating or isolating environmental contamination, and in Section 4.2, *“The cost to cure a particular problem must be determined, but may overstate or understate the effect on value... Costs may often be amortized over expected improvement life, and the present worth of the costs computed.”* It is the Respondent’s contention that this approach cannot be used to determine the assessment of a property.

27. Finally, the Respondent submitted that as pointed out in Section 4.4.1 Use of Property (Exhibit R-1, pages 55 – 56) industrial contamination may make production as originally established impossible. *“When determining the highest and best use of the property it is important to recognize that current use may need to be modified or abandoned. However, seldom is property so contaminated that the highest and best use indicates no value.”*
28. In the case of the present appeal, the Respondent did acknowledge that environmental concerns may exist and, as a result, the City of Edmonton had earlier recommended that the assessment of this property be reduced to \$4,531,500. The Respondent closed his submission by requesting the Board to reduce the 2011 assessment from \$5,664,500 to \$4,531,500 as had been earlier recommended but rejected by the Complainant.

### **DECISION**

29. It is the decision of the Board to reduce the assessment of the subject property for 2011 from \$5,664,500 to \$3,965,000.

### **REASONS FOR THE DECISION**

30. The Board places little weight upon the Respondent’s sales and equity comparables in that the specific elements of comparability, particularly regarding geotechnical and/or environmental considerations are absent thereby decreasing the reliability of comparability.
31. The Board places considerable weight on the Complainant’s submission that the market value of the subject property is somewhat diminished by geotechnical issues which may include the existence of both non-SRM, as well as SRM.
32. As a result, the Board concludes that there is a cost attached to the remediation of the subject property and that this cost should be taken into consideration when determining the market value of the subject property.
33. As a result of the presence of non-SRM and SRM material, a determination must be made as to the impact of these materials on the market value of the subject property.
34. In determining the market value of the subject property, the Board must take into consideration the information provided by third party reports regarding remediation costs when considering the impact of environmental concerns and geotechnical engineering reports upon market value.

35. Although it may be difficult to apply any kind of a definitive formula when determining the impact of environmental and geotechnical concerns upon market value, the Board has taken the following into consideration:
- 35.1 The Reid Crowther “Post Demolition Closure Report” of July 9, 1999 concluded that.... *“ based upon the conditions known that the long term use of this site as a meat packing plant has not resulted in contamination that would prevent future development of the site as a commercial/industrial property.”*
- 35.2 A development permit was issued in 2006 parallel with a geotechnical study to support the tendering of a facility planned for the north half of the site.
- 35.3 Shelby Engineering “Geotechnical Evaluation” of February 2007 contained a Recommendation, 4.0, *“These recommendations are based on the assumption that all existing fill currently on site will be removed from all areas that will be developed with buildings or pavement. The removal of fill will occur prior to the installation of building foundations. Some of the fill could potentially be retained beneath landscaped areas pending the site grading requirements; however the current fill is unacceptable for use to support pavements or floor slabs.”*
- 35.4 The Complainant presented a variable cost analysis on the recommendation from Shelby Engineering, without consideration for other alternative remediation procedures.
- 35.5 Depending on the site coverage of a typical industrial building, how much of the contaminated soil would have to be removed to accommodate the construction of a building, parking lot, and access roads?
- 35.6 The Board notes the City of Edmonton’s “Attributes Used To Specify the 2011 Valuation” for Industrial Vacant Land, categorized percentage deductions for varying degrees of negative impact on market value. From this chart, the Respondent provided a 10% deduction for access/egress on the 2011 assessment and provided a recommendation for a further 20% reduction for environmental issues.
- 36 The Complainant is seeking a reduction based on his argument on a single use; however, based on the submission of the Respondent, the Board concluded that the best and highest use may require an examination of other uses and varying degrees of site coverage.
- 37 The Board rejects the position of the Complainant that the market value of the property should be reduced to Nil. This position is neither supported by professional literature nor by the earlier decisions of CARB or MGB as presented by the Complainant.
- 38 In the final analysis the Board has taken into consideration all the reasons for its decision and in particular makes its final determination for the reduction in the assessment for the current year on the basis that not all of the site may need to be fully remediated as submitted by the Complainant’s engineering study. Taking into consideration the Respondent’s attribute deductions of 10% for access/egress, a further recommended reduction of 20% extreme site condition, the Board has added an additional 10% for geotechnical/environmental considerations.



## **DISSENTING OPINION AND REASONS**

39. There is no dissenting opinion.

Dated this 25<sup>th</sup> day of October, 2011, at the City of Edmonton, in the Province of Alberta.

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Steven Kashuba, Presiding Officer

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*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: Premium Brands Operating Limited Partnership  
Bennett Jones LLP.