



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON AB T5J 2R7
(780) 496-5026 FAX (780) 496-8199

NOTICE OF DECISION NO. 0098 349/10

Ducharme, McMillen & Associates Canada Ltd
727 7 Avenue SW, Suite 1520
Calgary, AB T2P 0Z5

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 November 03, 2010, respecting a complaint for:

Roll Number 10125696	Municipal Address 7003 8 Street NW	Legal Description Plan: 0821861 Block: 2 Lot: 8
Assessed Value \$7,292,500	Assessment Type Annual - Revised	Assessment Notice for 2010

Before:

Rob Reimer, Presiding Officer
Petra Hagemann, Board Member
Howard Worrell, Board Member

Board Officer: Annet N. Adetunji

Persons Appearing: Complainant

Patrick Lambie
Matthew Pierson

Persons Appearing: Respondent

Joel Schmaus, Assessment & Taxation Branch
Aleisha Bartier, Law Branch

PRELIMINARY MATTERS

The parties present indicated no objection to the composition of the Board. The Board Members indicated no bias with respect to this file.

BACKGROUND

The subject property is a 71,140 sq. ft. building on a 107,262 sq. ft. lot, located at 7003 8 Street NW in the Maple Ridge Industrial subdivision. The facility is an Earl M. Jorgensen (Canada Inc) metals service centre.

ISSUE(S)

There were two issues identified at the hearing. The first issue was whether or not the assessed area of the building was correct. The second issue was whether or not the improvements should have been assessed for the 2010 tax year.

LEGISLATION

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

S.284 (1) In this Part and Parts 10, 11 and 12,

(j) “improvement” means

(i) a structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

(iii) a designated manufactured home, and

(iv) machinery and equipment;

(u) “structure” means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;

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.

S.291 (1) Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose.

(2) No assessment is to be prepared

(b) for new improvements that are intended to be used for or in connection with a manufacturing or processing operation and are not completed or in operation on or before December 31, or

(c) for new improvements that are intended to be used for the storage of materials manufactured or processed by the improvements referred to in clause (b), if the improvements referred to in clause (b) are not completed or in operation on or before December 31.

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.*

POSITION OF THE COMPLAINANT

The Complainant stated, on page 2 of C-1, that there was an error in that the gross area of the office building was overstated by 5000 sq. ft. The Complainant further stated that on R-1, pg 14 of the Respondent's brief, the office area of the subject property had been revised to correct this error. The Complainant accepted the revised calculations and therefore, this issue became moot.

The Complainant stated (C-1, pg 2); "The property should not be assessed as per s.291 (2) of the *Municipal Government Act* (MGA) as it is used for or in connection with a processing operation and was neither complete nor capable of being used for its intended purpose on or before December 31, 2009. Utility connections were not completed until April 27, 2010 and the occupancy permit was not issued until May 10, 2010."

The Complainant submitted that, pursuant to s.291 (2) of the MGA, no assessment of the improvements to the subject property should have been prepared for the 2010 assessment year.

POSITION OF THE RESPONDENT

The Respondent challenged the use of the subject property. He maintained that this was simply an industrial warehouse as compared to a special purpose manufacturing or processing building (R-1, pg 7). Upon inspection in 2010, he observed that the machinery and equipment used for processing was not integral to the building.

The Respondent argued that the word "*improvements*" under s.291 (2) (b) of the MGA, did not apply to the structure but only to the machinery and equipment within the structure.

The Respondent recommended that the 2010 assessment be revised from \$7,292,500 to \$5,699,000 (R-1, pg 14) to reflect the corrected area.

FINDINGS

The issue regarding the size of the building was abandoned by the Complainant.

The Board finds that the subject property was intended to be used as a processing operation.

The Board finds that the improvements to the subject property were not completed by December 31, 2009.

DECISION

The complaint is allowed and the assessed value of the improvements is set at \$0.00. The revised assessment for the subject would reflect the value of the land only at \$650,500.

REASONS FOR THE DECISION

The Board finds that the facility is a processing operation. C-1, pg 16 describes the processing operation of the subject property. Also on this page, it states that the judicial test to be applied in determining whether processing has taken place, is whether there has been a change in the form, appearance or other characteristics of the goods and whether the goods become more marketable. The Board accepts that the improvements of the subject property were intended for the processing of materials.

The MGA, s.291 (2) (b) and (c) state that new improvements intended for manufacturing or processing and not completed or in operation by December 31 of the year prior to the taxation year, must not be assessed.

The MGA, s.284 (1) (j) (i) defines an improvement as a structure. s.284 (1) (u) defines a structure as a building erected in, on, over or under land. Therefore, the Board determines that the subject property was an improvement which was not completed or in operation on December 31, 2009 and, therefore, no assessment should have been prepared for the improvement portion of the subject property for the 2010 assessment year.

Dated this 8th day of November, 2010, at the City of Edmonton, in the Province of Alberta.

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, R.S.A. 2000, c.M-26.

cc: Municipal Government Board
Earle M. Jorgensen (Canada) Inc.