



IN THE MATTER OF A COMPLAINT filed with the Leduc Composite Assessment Review Board pursuant to Part 11 of the *Municipal Government Act*, being Chapter M-26 of the Revised Statutes of Alberta 2000 (the Act).

BETWEEN:

Farm Air Properties Inc.

COMPLAINANT

and

City of Leduc

RESPONDENT

BEFORE:

**C. Duxbury, PRESIDING OFFICER
D. Marchand, BOARD MEMBER
B. Anderson, BOARD MEMBER**

This is the decision of the Leduc Composite Assessment Review Board (the Board) from a hearing held on the 26th of November, 2013 with respect to a property assessment entered into the assessment roll of the Respondent municipality as follows.

ROLL NUMBER:	015075
LOCATION ADDRESSES:	7106 42 Street
ASSESSED VALUE:	\$5,352,000

Appeared on behalf of the Complainant:

- Adam Greenough
- Chris Buchanan

Appeared on behalf of the Respondent:

- Warren Powers

Board's decision in respect of procedural or jurisdictional matters:

[1] The parties had no objection to the panel representing the Board as constituted to hear this complaint. No procedural or jurisdictional matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property description:

[2] The subject property is a warehouse located at 7106 42 Street in the North Leduc Industrial Park in Leduc. The building has a gross area of 58,153 square feet (sf), and its construction was completed in early 2013.

Issue:

[3] The main issue to be decided is whether the Respondent should have used the actual cost of construction to value the subject property. A secondary issue is whether costs should be awarded to either party in the circumstances of this complaint.

Requested assessed value: \$5,048,000

Board's decision: The Board confirms the assessment at \$5,352,000.

Legislative authority, requirements and considerations:

[4] The Board's authority is found in the *Municipal Government Act* and the associated Government of Alberta legislation and regulations. Within this framework the following provisions of the Act and the *Matters Relating to Assessment and Taxation Regulation* were considered by the Board to be of particular relevance.

Municipal Government Act

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;

289(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.

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation and other standards set out in the regulations, and
- (b) follow the procedures set out in the regulations.

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

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.

(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) (MRAT)

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.

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

Position of the parties:

Complainant's position

[5] The Complainant's position is that because construction of the subject property was not complete on December 31, 2012, the income approach to valuing the subject property should not have been used by the Respondent to arrive at the property's assessed value. In the Complainant's opinion, the actual cost of construction of the subject property should have been used by the Respondent to come to its assessed value.

[6] The Complainant provided the Board with a document dated May 29, 2013, which the Complainant advised was a copy of the final invoice for the cost of construction of the subject building. This document indicates that the total cost to construct the building was \$5,759,898.61. Referring to the Assessment Detail Report for the subject property, the Complainant accepts the Respondent's estimate that the building was 60% complete on December 31, 2012. The Complainant also accepts the Respondent's estimate of the value of the land in the amount of \$1,592,000. By taking 60% of the total cost to construct the building shown on the May 29, 2013 document and adding the Respondent's land value estimate, the Complainant arrives at its requested assessed value for the subject property of \$5,048,000, rounded up from \$5,047,939.17.

[7] In support of its position that the actual cost of construction should be used for new buildings the Complainant submitted Notice of Decision No. DL 012/00, and the Board has reviewed and considered it.

[8] On page 8 of Exhibit C1, the Complainant notes that the Respondent applied a \$12.00 per sf market rent in its income approach to valuing the subject property. Assuming the costs to rent out space in the subject property would be 5%, and assuming an average lease term of five years, the Complainant argues that the actual market rent for the subject property would be closer to \$9.00 per sf. Upon questioning by the Board, the Complainant clarified that they were not asking the Board to use \$9.00 per sf as the market rent for the subject property; rather, that value was being used for illustrative purposes only. The Complainant confirmed that the sole argument being advanced is that the actual cost of construction of the subject property should have been used by the Respondent to arrive at the assessment of the subject property.

[9] The Respondent requested that \$1000 in costs be awarded against the Complainant for what the Respondent refers to as the Complainant's flagrant abuse of the assessment review system. In rebuttal, the Complainant argued that it has a legislated right to file a complaint against the assessment of its property and noted that it followed every step required under the legislation. In response to the Respondent's claim for costs, the Complainant counterclaims against the Respondent in the amount of \$1,000 for the Respondent's delay of the hearing process, \$4000 for preparing a response to the original claim of costs, and \$1,500 for the half day hearing, for a total of \$6,500.

Respondent's position

[10] The Respondent used the income approach to valuing the subject property, and advised the Board that the same methodology was used to value similar properties that were under construction on December 31, 2012. To arrive at the assessed value, the Respondent applied a \$12.00 per sf rent rate to 57,878 sf of the building, and a \$4.00 per sf rate to the 275 sf

mechanical room. After applying the typical deductions and a capitalization rate of 7.75%, the Respondent came to a value of \$8,011,000. The Respondent deducted the \$1,592,000 land value from the \$8,011,000 to arrive at the improvement value. The improvement value was multiplied by 60% to account for the fact that the building was estimated to be 60% complete on December 31, 2012. The resulting improvement value of \$3,851,400 was added to a reduced land value of \$1,500,000 to arrive at the final assessed value of \$5,352,000.

[11] To confirm that the assessed value of the subject property derived using the income approach was accurate, the Respondent also valued the subject property using cost data from the Marshal and Swift manual. Based on the cost approach to value, the Respondent arrived at an assessed value of \$5,481,874. Given that the value of the subject property derived using the cost approach was within 2.4% of the value of the subject property derived using the income approach, the Respondent felt that its assessed value was well supported. Notwithstanding the fact that the cost approach resulted in a higher assessed value, the Respondent elected to use the lower assessed value derived from the income approach.

[12] The Respondent argued that it would be inappropriate to use the actual costs of construction for a given property because, for a variety of reasons, those costs may not be a true reflection of the market. That is why, the Respondent argued, if the cost approach to value is going to be used at all then the costs data must come from a recognized assessment manual like Marshall and Swift.

[13] The Respondent took issue with the fact that the Complainant was seeking what amounts to only a 5.7% reduction in assessed value. The Respondent feels they were more than reasonable in coming to the assessed value for the subject property. For example, the Respondent noted that the land value used for the assessment was the same as last year's even though land values in Leduc had actually risen. Further, given that the Final Occupancy Permit was issued on February 14, 2013, the Respondent argued that it is clear that the building had to have been more than 60% complete on December 31, 2012 for it to be 100% complete only six weeks later.

[14] The Respondent takes the position that it was "frivolous and fraudulent" for the Complainant to dispute the assessment, and is "deeply disturbed" by the conduct of the Complainant in pursuing the complaint. The Respondent takes issue with the fact that the complaint was filed on the last day possible under the legislation; that the Complainant appears to have used a generic laundry list of reasons for the complaint at the time of filing, but did not pursue all of them in its disclosure package; that the requested assessed value listed on the complaint form was different than the assessed value requested in the disclosure package, as well as several other matters detailed in Exhibit R1. In the circumstances, the Respondent requests that \$1000 in costs be awarded against the Complainant.

Board's findings and reasons for decision:

[15] Section 293(1) of the Act requires that assessors prepare assessments in a fair and equitable manner. Section 6(1) of MRAT requires that when an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value. "Market value" is defined in s. 1(1)(n) of the Act as the amount that a property might be expected to realize if it is sold on the open market by a willing seller to a willing buyer. While the Respondent is legislated to derive fair and equitable assessments which reflect market value, the Respondent is not legislated to apply any one particular approach to arrive at that market value. For the subject property the Respondent used the income approach to valuation.

[16] The onus is on the Complainant to provide sufficient evidence to justify a change to the assessment. The Complainant argued that the Respondent should have used the actual cost of construction of the subject building to arrive at the assessment. However, the Complainant provided no evidence to suggest that using the actual cost of construction of the subject building results in an assessment that reflects the market value of the subject property on July 1 of the assessment year. With no evidence to suggest that the actual cost of construction of the subject building reflects the amount that the property might have been expected to realize if it were sold on the open market by a willing seller to a willing buyer, the Board has no basis upon which to justify that a change to the assessment should be made.

[17] The case cited by the Complainant as support for its position that the actual cost of construction should be used for new buildings is a 2000 decision of the Municipal Government Board (MGB) relating to a supplementary assessment. The assessment under complaint in this case is not a supplementary assessment. While a supplementary assessment must be prepared in the same manner as assessments prepared under Division 1 of Part 9 of the Act, there are other factors that are considered as well. In any event, the actual cost to construct the improvements to the property in the case cited by the Complainant was not used to arrive at the supplementary assessment; rather, the cost data from the Marshall and Swift manual was. In the case of the subject property, the cost data from the Marshall and Swift manual supported the value derived by the Respondent using the income approach and, in fact, suggested a slightly higher assessed value. It is worthy of note that the difference between the two figures was resolved in favour of the Complainant.

[18] For the reasons stated above, the Board confirms the assessment at **\$5,352,000**. The Board does not consider this an appropriate case to exercise its discretion to award costs to either party. The Complainant is entitled by legislation to file a complaint against the assessment of its property, and did so in accordance with the legislated requirements. The Board was not persuaded that the conduct of the Complainant required sanction. While the Board agrees with the Complainant that this was a curious case for the Respondent to request a costs award, the amount of time devoted by the Complainant to defend the costs request was not so significant as to justify a costs award in counterclaim.

DATED AT THE CITY OF LEDUC THIS 13 DAY OF DECEMBER 2013.



Cathryn A. Duxbury

Presiding Officer

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

NO.	ITEM
C1	Complainant's Disclosure
R1	Respondent's Disclosure
C2	Complainant's Rebuttal

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.*

FOR ADMINISTRATIVE USE:

Appeal Type	Roll Number	Property Type	Property Sub-Type	Issue	Sub-Issue
Leduc CARB	015075	Warehouse		Cost/Sales Approach	Improvement Calculation