

# Central Alberta

Regional Assessment Review Board

Decision # CARB 0262-492/2012  
Complaint ID #492  
Roll #2010415

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COMPOSITE ASSESSMENT REVIEW BOARD DECISION  
HEARING DATE: 2012 AUGUST 23

PRESIDING OFFICER: M. CHILIBECK  
BOARD MEMBER: R. SCHALLER  
BOARD MEMBER: V. KEELER

BOARD CLERK: S. PARSONS

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BETWEEN:

7 Eleven Canada Inc.  
Represented by: Altus Group Limited

Complainant

- and -

The City of Red Deer

Respondent

[1] This is a complaint to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by the Assessor of the City of Red Deer and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	2010415
MUNICIPAL ADDRESS:	5925 – 54 AV
ID NUMBER:	492
ASSESSMENT:	\$1,167,200

[2] This complaint was heard by the Composite Assessment Review Board (Board) on the 23<sup>rd</sup> day of August, 2012 in the Council Chambers of City Hall in The City of Red Deer.

[3] Appeared on behalf of the Complainant:

- D. Porteous; representative of Altus Group Limited

[4] Appeared on behalf of the Respondent:

- A. Meckling; property assessor of The City of Red Deer
- R. Kotchon; property assessor of The City of Red Deer

### **JURISDICTION**

[5] The Central Alberta Regional Assessment Review Board has been established in accordance with section 456 of the *Municipal Government Act R.S.A. 2000, ch M-26* (hereinafter, "the MGA") and the *City of Red Deer Assessment Review Board Bylaw 3441/2009*.

[6] Neither party raised an objection to any Board member hearing the complaint.

[7] No procedural or jurisdictional matters were raised by either party.

### **PRELIMINARY MATTER**

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

### **PROPERTY DESCRIPTION**

[9] The subject property is a commercial property that consists of a convenience store and gas bar situated on a parcel of land of 23,760 square feet. The convenience store has an area of 2,995 square feet and the gas bar is comprised of a canopy, fuel dispensers, underground storage tanks and related equipment. The subject property is located in Riverside Meadows subdivision in northwest Red Deer.

### **BACKGROUND**

[10] The subject property is assessed using a combination of two methods of valuation. The capitalized income method is used to value the convenience store and the land attributable to the gas bar at a value of \$1,029,000. The depreciated replacement cost method is used to value the gas bar improvements at a value of \$137,900.

### **COMPLAINANT'S REQUESTED VALUE:**

Initial request per disclosure of evidence:	\$662,231.
Amended during the hearing to:	\$800,100.

### **ISSUES**

[11] The Complainant identified the matter of an assessment amount on the Assessment Review Board Complaint and attached a list outlining several grounds for the complaint. At the hearing the Complainant identified the following issues:

1. The gas bar improvements are personal property and therefore should be removed from the assessment.
2. The gas bar pad rental income should be removed from the capitalized income calculations.

## **BOARD'S FINDINGS IN RESPECT OF EACH ISSUE**

### **1. Gas Bar Improvements**

[12] The gas bar improvements are valued using the depreciated replacement cost method. These improvements, which consist of electronic fuel dispensers, concrete islands, underground storage tanks, canopy and related equipment are valued at \$137,900.

#### **Complainant**

[13] The Complainant argued that the gas bar improvements should not be valued because they are personal property and do not meet the definition of "improvement" according to s. 284(1)(j) of the Municipal Government Act (MGA). The Complainant primarily asserted the gas bar improvements do not meet the definition of structure according to s. 284(1)(u) MGA and argued that upon the sale of the subject property, the gas bar improvements would be specifically mentioned in the transfer of sale of the subject land. Also, the complainant suggested the gas bar improvements may be included in the capitalized income method.

#### **Respondent**

[14] The Respondent argued that the gas bar improvements are structures as defined in the MGA and supported their assertion by referring to decision MGB 127/04 provided in their disclosure of evidence. Decision MGB 127/04 is on an industrial facility in Red Deer County and dealt with the issue of an improvement regarding two different types of storage tanks. The MGB Municipal Government Board found that the tanks met the definition of an improvement.

#### **Board Finding**

[15] The Board was not persuaded by the Complainant's argument that the gas bar improvements do not meet the definition in the MGA. The Complainant's argument centered on their interpretation of the definition of an improvement in the MGA with no reference to any case law evidence. Reference was made to a City of Edmonton CARB decision wherein the Board found no reference to a gas bar; this decision was about a supplementary assessment on a home improvement warehouse; therefore the Board placed no weight on this decision.

[16] The Board found the Respondent's argument persuasive and decision MGB 127/04 convincing. Decision 127/04 contains an extensive analysis of an "improvement", specifically if the tanks meet the test for structure or if they are attached or secured to a structure. The Board is of the opinion that it is not necessary to reiterate the details of the analysis in this decision. Anyone reading this decision should also refer to decision MGB 127/04.

[17] However, the Board emphasizes the decision on the subject by quoting Cardiff Rating Authority as quoted in decision MGB127/04 that defines a structure.

"A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation, but it is still a structure even though some of its parts may be movable, as, for instance, about a pivot. Thus a windmill or a turntable is a structure. A thing which is not permanently in one place is not a structure, but it may be in the nature of a structure if it has a

permanent site and has all the qualities of a structure, save that it is on occasion moved on or from its site."

[18] Also, the Board quotes the Stack case as quoted in MGB 127/04 which set the test of whether or not certain articles were fixtures or chattels (personal property).

"(1) That articles not otherwise attached to the land than by their own weight are not to be considered a part of the land, unless the circumstances are such as to show that they were intended to be part of the land.

(2) That articles affixed to the land even slightly are to be considered part of the land unless the circumstances are such as to show that they were intended to continue chattels.

(3) That the circumstances necessary to be shown to alter the prima facie character of the articles are circumstances which show a degree of annexation and object of such annexation which are patent to all to see.

(4) That the intention of the person affixing the article to the soil is material only so far as it can be presumed from the degree and object of the annexation.

(5) That, even in the case of tenants' fixtures put in for the purposes of trade, they form part of the freehold, with the right, however, to the tenant, as between him and his landlord, to bring them back to the state of chattels again by severing them from the soil, and that they pass by a conveyance of the land as part of it, subject to his right of the tenant."

[19] The Board is convinced the subject gas bar improvements meet the definition of improvement as defined in the MGA. These "things" are either erected or placed in, on, over or under the subject land and are intended to remain permanently on the subject land. The canopy at 1,350 square feet consists of a roof anchored to supporting columns that sit on a permanent foundation. The underground storage tanks are of substantial size at approximately 30,000 and 37,000 liters and located under the land. The gas dispensers are anchored to the concrete islands placed on the land. The related equipment is attached or secured to the above mentioned structures. Most of these improvements are of considerable size and securely anchored to the land; they are not easily moved or transported. The Board believes these "things" are intended to remain permanently in place. Upon being questioned by the Board, the Complainant indicated that the gas bar improvements may be assessable.

## **2. Gas Bar Rental Income**

[20] The convenience store (c-store) and attributable land and the land attributable to the gas bar are valued by the capitalized income method. In the valuation, a rental amount "equivalent to pad rental lease gas bar" (pad rent) is included in the effective gross income. The assessed value for both components is \$1,029,300.

[21] The Complainant disputes the inclusion of the pad rent and requested the value be reduced to \$662,231.

### **Complainant**

[22] The Complainant argued that in valuing the subject property the pad rent amount of \$32,500 should be excluded because the building rent rate includes the building value and the value of

the parcel of land on which the building is situated. The inclusion of the pad rental captures the land value that is also captured in the building rent rate and the result is the land is valued twice. [23] The Complainant provided an example from another municipality where the assessment of a similar property was calculated "as a lease upon the building itself, without double taxing based upon an additional land lease rate." The Complainant explained that this example shows a rent amount for the gas bar which accounts for the gas bar improvements and the related land. No separate or additional amount is shown for the gas bar improvements

[24] Also, the Complainant asserted that it is incorrect to "use multiple methods for assessment of a property."

### **Respondent**

[25] The Respondent asserted that the pad rent for the gas bar site is for land only. Reference was made to "Market Value and Mass Appraisal for Property Assessment" (MVMA) valuation guide for Gas Stations which states in part that "In the assessment of properties in Alberta, the cost approach is recommended for the use in the valuation of gas station properties. The final sum of land value plus improvement value is the estimated market value of the real estate at the subject location"

[26] A chart of several comparables was provided to show the consistent use of the above said methodology in the valuation of commercial stores with gas bars: the gas bar improvements at replacement cost, the commercial store at market rent and the gas bar pad at market lease.

### **Board Findings**

[27] The Board is not persuaded to exclude the pad rent from the capitalized income method as asserted by the Complainant. The Complainant provided no evidence to support the claim that the building rental rate captures the full value of the parcel of land. The comparable referenced in evidence from another municipality is interesting but requires more information to fully understand the assessment. The information shown makes reference to "3-island/3-pump at a rate of \$15,000/year"; does this description cover the improvements, the land or the land and improvements? However the Board finds it is not necessary to consider the comparable as there are comparables available from within The City of Red Deer that can be referenced.

[28] The Board accepts the Respondent's position and methodology of valuing the c-store and attributable land and the land attributable to the gas bar site. The evidence clearly shows both components situated on the parcel of land and the Complainant provided no evidence to show that the gas bar is located on land that is attributable to the c-store or that the gas bar is a non-conforming use. From a common sense perspective, the Board believes that the building does not require the whole parcel from a land use perspective; the extra land allowed the development of a gas bar. As a result the rental rate for the c-store does not capture the value for the parcel of land; it captures the portion attributable to the store.

[29] The Board finds the gas bar guideline is reasonable and acceptable because, as stated, gas bar properties do not typically sell in the market place. It is a generally accepted appraisal/valuation practise to value these types of properties, where there is no reliable income and expense data and no sales data, by using the replacement cost method. This methodology was confirmed by the MGB in decision MGB 083/10.

[30] In summary the Complainant stated that the requested reduction is changed to \$800,131 which includes the c-store, land and the gas bar improvements.

### **SUMMARY**

[31] For the reasons noted above the assessed value of the subject property is CONFIRMED as follows:

Roll #2010415 confirmed at \$1,167,200.

[32] Dated at the City of Red Deer, in the Province of Alberta this 20 day of September, 2012 and signed by the Presiding Officer on behalf of all three panel members who agree with this decision.



M. Chilibeck, Presiding Officer

**This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca).**

## **APPENDIX "A"**

Documents Presented at the Hearing  
And considered by the Board

<u>NO.</u>	<u>ITEM</u>
1. C1	Complainant's Disclosure of Evidence
2. R1	Respondent's Disclosure of Evidence

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<b>Decision No. 0262-492/2012</b>		<b>Roll No. 2010415</b>		
<b><u>Appeal Type</u></b>	<b><u>Property Type</u></b>	<b><u>Property Sub-Type</u></b>	<b><u>Issue</u></b>	<b><u>Sub-Issue</u></b>
CARB	Retail	Stand Alone	-Cost Method -Income Method	-Improvement Calc -Lease Rate