

Edmonton Composite Assessment Review Board

**Citation: Altus Group for Mike Priestner Real Estate Inc v The City of Edmonton, 2014
ECARB 01055**

Assessment Roll Number: 3188935
Municipal Address: 4404 66 Street NW
Assessment Year: 2014
Assessment Type: Annual New
Assessment Amount: \$9,168,000

Between:

Altus Group for Mike Priestner Real Estate Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Robert Mowbrey, Presiding Officer
Robert Kallir, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer the parties indicated they did not object to the Board's composition. In addition, the Board members stated they had no bias with respect to this file.

[2] The parties giving evidence were either sworn in or affirmed with respect to the evidence they were to give at the hearing.

Preliminary Matters

[3] There were no preliminary matters.

Background

[4] The subject property is an automobile business located at 4404 66 Street NW in the neighborhood of Michaels Park with a lot size of 190,874 square feet (s.f). The building is valued on the cost approach to value. The building assessment is \$4,626,526 and the land assessment is \$4,541,822 for a total assessment of \$9,168,000.

Issue

[5] Should the assessed value of the improvements, calculated using the cost approach to value, include the Goods and Services Tax (GST)?

Position of the Complainant

[6] The Complainant filed this complaint on the basis that the subject property's assessment exceeds the best estimate of market value. In support of this position, the Complainant presented the Board with an evidence package, and a rebuttal package and the following four Composite Assessment Review Board (CARB) decisions.

- ECARB 00753
- ECARB 00754
- ECARB 00755
- CARB 74523 P-2014

[7] The City of Edmonton uses the Marshall & Swift (M&S) Valuation Service which provides cost data for determining replacement costs of buildings and other improvements in the United States, Puerto Rico, Guam and Canada. In order to properly capture costs in these many diverse locations, the M&S Valuation Service has applied local multipliers to convert costs to specific locations. Local multipliers for Canada are converted to the Canadian dollar and include GST.

[8] Historically, the City of Edmonton applied a base rate multiplier of 0.9524 which was an adjustment to remove GST from values calculated using M&S. The Board was referred to properties set out in Exhibit C-1 on which the City for the 2012 and 2013 tax years used the base rate multiplier of 0.9524. The Complainant advised the Board that in the 2014 tax year the City had ceased using the base rate multiplier of 0.9524, effectively including GST in their cost approach to value.

[9] The Complainant submitted that removing the base rate multiplier that has historically been included by the City in the cost detail report is incorrect.

[10] The Complainant noted that other municipalities in Alberta, such as Parkland, County, and the Regional Municipality of Wood Buffalo etc. continue to incorporate a downward adjustment to account for GST.

[11] The Complainant reviewed the Canada Revenue Agency (CRA) Statement of Business or Professional Activities form and stated that GST/HST are deducted from business income as they are non-taxable.

[12] The Complainant stated that if no adjustment is made to remove GST in the construction cost of improvements to the property, the taxpayer has essentially been taxed on tax. In provinces that apply GST and Provincial Sales Tax (PST) both taxes are applied simultaneously on the base value, rather than one on top of the other.

[13] The Complainant advised the Board that any purchaser of a commercial property who carries on a business pays GST for purchases of products and services and receives GST on sales of its products and services. The purchaser deducts any GST it pays (Input Tax Credits) from the GST it receives, and therefore pays no GST for the purchased property.

[14] The Complainant stated the Municipal Board of Manitoba noted in Order No. A-05-236 (2005) the following:

“The Board notes that GST is included in Marshall and Swift estimates and that when the Board has used Marshall and Swift, GST has been assumed. Given the system of input tax credits, it is only the end user that is responsible for the GST. In this instance, the Board will not include GST.”

[15] The Complainant advised the Board that M&S cost estimates include all local taxes, including GST in Canada. Therefore the true cost is the M&S figure less the GST. This precedent has been accepted in Winnipeg and Manitoba as a whole. Manitoba creates its own cost manual, but maintains that it excludes GST from its costs estimates, used for assessment purposes.

[16] The Complainant stated the 2005 Alberta Construction Cost Reporting Guide (CCRG), pursuant to Sections 322 and 322.1 of the *Municipal Government Act* (MGA), is the guide used by company representatives in providing information needed by assessors to prepare assessments for property. The procedures within the guide are consistent with *Matters Relating to Assessment and Taxation Regulation* (MRAT). Construction costs include all costs of materials and labor required to construct an industrial facility, including the costs required to install production machinery and equipment.

[17] The Complainant noted that the CCRG sets out that the cost of property, improvements, structures, or machinery and equipment that do not meet the legislated definitions are to be excluded from assessment. GST paid on construction materials and services is expressly listed as property that cannot be assessed. The GST paid by the owner is credited against tax collected by the owner from the sale of plant products and need not be recovered in the price of the product itself.

[18] The MGA gives definitions to the terms “property”, “improvements”, “structures”, and “machinery and equipment”. The Complainant concluded that the definition of improvement does not include GST; and therefore, the assessment for the improvements should not include GST.

[19] The Complainant argued that the omission of an adjustment for GST is not an opinion of value; but is an error in the calculation or the reconstruction costs of the property.

[20] In CARB decision CARB 1937/2011-P the Presiding Officer stated “The Respondent pointed to Matters Relating to Assessment and Taxation AR 220/2004 (MRAT), s.10 (3) that addresses the quality standard for the preparation of assessments but agreed this is not a legislative standard that fetters the discretion of the Board in rendering a decision on a complaint.” “The Board also notes that there is no legislated restriction relative to the 5 % guideline”.

[21] The Complainant presented a number of cases in support of excluding the GST from the assessed value of the improvements.

[22] In *Tolko Industries Ltd. v. Big Lakes (Municipal District)* (1998) A.J No. 161 1998 ABQB 51, the decision explains the application of GST succinctly:

“... whereas GST is a direct payment to the vendor of goods and services and the end user of these goods and services has an unconditional entitlement to the return of the GST. During the plant construction GST was paid, then refunded and therefore non-assessable.”

[23] In the case of *New Brunswick (Executive Director of Assessment) v. Food City Ltd.* (2005) NBCA 65, the New Brunswick Court of Appeal upheld the appealed New Brunswick Court of Queen’s Bench decision, to exclude Harmonized Sales Tax (HST) from reconstruction cost calculations. The decision stated that to include the tax would cause the value to be “artificially inflated and lose any rational connection to reality and truth. It would, as the Board noted, be an affront to common sense.”

[24] In *Assessor of Area #08 v. Wedley* 2000 BCSC 1365/2000 BCSC 1365, Justice Lowry states:

“the question was as the Board framed it: In estimating the value of a property for assessment purposes, is it proper appraisal practice to include an amount to the Federal Government for GST on the purchase of a newly constructed property? The Board determined that, on the evidence before it, the answer was no.....There can be no doubt on a reading of the decision that the Board concluded the amount of GST paid was not to be included. It then went on to determine what, in the result, the assessments should be.”

[25] The Board was referred to the following additional decisions and cases:

- *Winnipeg (City) Assessor v. Manitoba Lotteries Corp.* [2005] M.M.B.O. No.249 Order No. A-05-236
- *Memorial Gardens (Manitoba) Ltd. v. Manitoba (Municipal) Assessor* (2012) M.M.B.O No. 16
- *Memorial Gardens (Manitoba) Ltd. v. Manitoba (Municipal) Assessor* (2009) M.M.B.O No. 111
- Central Alberta Regional Assessment Review Board CARB 0262-491/2012

[26] The Complainant argued that when the requested value falls within 5% of the assessed value many Boards do not alter the assessment. A decision of the Edmonton Composite Assessment Review Board from a hearing held on November 29, 2010 with respect to roll number 9987054 was presented that stated that, the Board is of the opinion that calculation errors do not fall to the benchmark 5% practice. The Complainant argued that the GST issue is an error in calculation as opposed to a range of tolerance.

[27] The Complainant referred the Board to a web page outlining the GST/HST rates for Canada. The Alberta rate is 5%. In addition, the Complainant referenced a Canada Revenue Agency web page which states “generally, GST/HST registrants must charge and account for the GST on taxable supplies (other than zero-rated supplies) of property and services made in Canada. However, where GST/HST registrants make taxable supplies (other than zero-rated supplies) in Canada, and those supplies are made in a participating province, they must charge and account for the HST instead of the GST”.

[28] The Complainant contends that if the Respondent utilizes the wrong methodology then you get the wrong assessment. The Complainant stated that the methodology utilized by the City to determine market value on the cost approach by including the GST is incorrect. The Complainant referred the Board to *GSL Chevrolet Cadillac Ltd. v. Calgary (City)* 2013 ABQB 318 that stated, "The 30% reduction was plucked out of thin air." The Complainant notes the GST issue is a solid 5% number every time".

[29] The Complainant contends that *Mountain View (County of) v. Alberta (Municipal Government Board)*, 2000 ABQB 594 states "The County argues however that the Board has not used the information derived from a mass appraisal to establish market value in violation of the requirement in section 11 that the assessment must be prepared using mass appraisal. The County does not argue that the revised assessment is not at market value. Its argument is that the methodology used by the Board is wrong because it did not use mass appraisal."

[30] The Complainant contends that the decision *Strathcona (County) v. Alberta Assessment Appeal Board*, 1995 ABCA 165 states, "So the Act, read in light of the general law, requires, except where otherwise clearly stated, that assessments be both at 'actual value' and also equitable as between taxpayers. It contemplates the possibility that an assessment may be at 'actual value' and yet be inequitable."

[31] The Complainant contends that the *British Columbia (Assessor for area 9 – Vancouver) v. Bramalea Ltd.*, 1990 BCCA 284 states that "Where the taxpayer subjected to the higher assessment is in competition with others in the same class, and is for this reason unable to pass on the extra tax burden to customers, the unfairness of such a result becomes blatant..... It is my view that the principles mentioned give the taxpayer two distinct rights: (i) a right to an assessment which is not in excess of that which can be regarded as equitable; and (ii) a right not to be assessed in excess of actual value."

[32] The Complainant contends that the Calgary CARB 74523 P-2014 decision states, "To that end, the Board is not restricted in making any quantum or percentage change to an assessment if it is justified. Furthermore, the percentage change requested is 5.6%, so outside the "range of tolerance" suggested by the Respondent. The Board finds this argument frivolous and demonstrating a lack of understanding of the Act and Regulations."

[33] The Complainant referred the Board to 2014 decisions ECARB 00753, 00754 and 00755 which all support the Complainant's assertion that the GST should be removed from the assessment.

[34] The Complainant stated that the subject property is not at typical market value as of July 1, 2013 because the building assessment includes the GST. In order to remove the GST, the Complainant applied a base rate multiplier of 0.95240 to the building assessment to produce a value of \$4,395,200.

[35] The Complainant requests the Board to reduce the 2014 assessment for the improvements on the subject property from \$4,626,526 to \$4,395,200.

[36] The Complainant concluded by stating that the Complainant has met onus, has proven that the inclusion of the GST is incorrect, has made a prima facie case and has therefore shifted the onus to the Respondent.

Rebuttal of the Complainant

[37] The Complainant addressed the Replacement Cost Approach to Market Value and noted that market cost assessments in Edmonton and the rest of Alberta are prepared on the basis of “replacement cost”. Replacement cost was defined as “the cost, including material, labor, and overhead, that would be incurred in constructing an improvement having the same utility to its owner as the improvement in question, without necessarily reproducing exactly any particular characteristic of the property” (IAAO – Property Appraisal and Assessment Administration). Further, in market value assessment in Alberta, “typical” costs for properties are commonly established using M& S, which estimates the “typical” cost of construction and is used for numerous purposes. The Respondent agrees that these cost estimates include GST.

[38] The Complainant referenced the CCRG as it indicates that in Alberta, GST cannot be assessed as it does not meet the definitions of “property”, “improvements”, “structures”, or “machinery and equipment”. The Complainant noted that in numerous sections of the CCRG, reference is made to “property” and “structures”, which are not regulated property, and “plants” and “facilities” which may contain both regulated and non-regulated property. In the context of the subject complaints, GST is not a “structure” or “anything attached or secured to a structure...”.

[39] The Complainant also referenced section 2.300.600 of the CCRG which states “The GST paid on construction materials and services is excluded”.

[40] The Complainant submitted that contrary to the municipality’s statement that “since the properties under complaint are assessed at market value, a regulated cost guide is not relevant.” Both the 2013 Metal Buildings Manual and the Work Camp Manual relate to properties assessed on the market value standard and exclude GST.

[41] With respect to the Input Tax Credit (ITC) on Commercial Property, the Complainant presented a simple example of a GST flow through and a copy of a memo dated June 25, 2014 from Deloitte & Touche LLP to the Altus Group that stated “Yes, a commercial developer (or any business) is eligible to claim ITCs related to expenses incurred on the construction of a new industrial or commercial facility, provided the facility will be used in a commercial activity.” The memo also stated “Yes, a purchaser of a commercial property for use in a commercial activity or for supply of commercial lease is eligible to claim the ITCs related to the GST paid on the purchase price”.

[42] The Complainant provided the following comments on the cases presented by the Respondent:

- *Shaske and Zeiner v. City of Calgary* MGB 130/97: Agrees that GST should not be included in the assessment, no reference to any of the cases cited by the appellant, none of the same evidence or argument as the case at hand was reference or presented.
- *Derbyshire Consultants v. City of Calgary* MGB 025/99: No reference to any of the cases cited by the appellant, the evidence and argument are not the same as in the case at hand.
- *Boccaccio v. Calgary* DL 020/02: No reference to any of the cases cited by the appellant, the property was a residential property and it was a completely different scenario than the subject appeal. The purchaser was the end user of the residential property and was not eligible for a credit of the GST paid.

- *Mitchell v. North Shore/Squamish Valley Assessor*, Area No. 08, 2002 Carswell BC 964: This was a residential property in British Columbia and it had a completely different fact scenario than the subject appeal and was not eligible for GST.
- *Banff Springs Hotel v. Town of Banff* MGB 079/03: The decision does not expressly deal with GST, no reference to any cases cited by the appellant.
- *Gilmer v. Calgary* DL 036/04: The property was a residential property, a new sale and a completely different fact scenario than the subject appeal.
- *MacBain Properties Ltd. v. Red Deer* CARB 0262-491/2012: The decision does not expressly deal with the treatment of GST in its decision, none of the same evidence or argument.
- *1528670 Ontario Limited v. The Town of Okotoks* 0238/02/2012: This case does not expressly deal with the treatment of GST and it had none of the same evidence and argument as the case at hand.
- *Singh v. City of Calgary* LARB 70100P-2013: It was a residential property, a new sale to the user, and had a completely different fact scenario than the subject appeal.

[43] In conclusion, the Complainant stated that the rebuttal evidence confirms that the submission filed by the City does not support a decision to maintain the present assessment. The assessment of the subject property is in excess of market value and is inequitable.

Position of the Respondent

[44] The Respondent defended the 2014 assessment by providing the Board with evidence package and a legal brief responding to the Complainant's argument relating to the use of GST in the cost approach. In addition, the Respondent provided the Board with the following four CARB decisions.

- CARB 75757 P-2014
- CARB 74523 P-2014
- CARB 73660 P-2013
- 2014 ECARB 00693

[45] The Respondent advised the Board about the mass appraisal approach to the valuation of property:

Mass appraisal is a methodology for valuing individual properties which involves the following process:

- Properties are stratified into groups of comparable properties
- Common property attributes are identified for the properties in each group

- A uniform valuation model is calibrated for each group using market information incorporating the property attributes.

[46] The Respondent advised the Board that the cost approach involves adding the depreciated replacement cost of improvements to the estimated value of land (derived from sales). The cost approach to value is applied to all commercial/industrial (special-use) properties that do not fit the direct sales or income approach assessment models. These are properties that may or may not actively trade in the market place due to their features or use. They are also properties that often do not have sufficient income and expense data available to effectively apply an income approach to derive a value.

[47] The subject property has been valued using the cost approach and has been classified by the City as a special purpose property.

[48] Appraisers have concluded that the cost-approach is the only approach of significance in valuation of special-use properties. The cost approach involves adding the market value of the land, presumed to be vacant, to the replacement new, less depreciation of the improvements.

- Replacement Cost New Calculation (calculated from a costing manual): The M&S Costing Manual was used to determine the 2013 replacement cost in the majority of the special purpose inventory. In some cases assessments prepared using former versions of the former provincial manuals (1979 and 1984) were entered on the assessment system and are presently being converted to the M&S manual.
- Depreciation Calculation: normal physical depreciation applied. Physical depreciation was applied using the depreciation rates in the M&S Costing Manual.

[49] The Respondent advised the Board that special-use properties are assessed using the cost approach to value and resulting assessments were tested and the results indicated that the model predictions of value meet the provincial quality standards as set out in MRAT.

[50] The Respondent gave evidence regarding the City's utilization of M&S:

- City of Edmonton uses M&S valuation to prepare their cost based assessments. The local modifier provided by M&S manual includes the GST as a typical cost incurred when purchasing building products in Canada.
- Prior to 2014 the City opted to exclude GST from their cost based assessments. There were a number of variables at the time that lead to this decision. GST came into effect in 1991. The City brought their new system on line in 1996, but it wasn't until 2002 that M&S rates became a functional feature in that system.
- Prior to the introduction of the M&S manual, the City's inventory of cost-based assessments were prepared using a variety of antiquated provincial cost manuals. Obviously, none of these manuals contemplated an allowance for GST. In order to ensure consistency and equity among cost based properties, the GST that formed part of the M&S cost was subsequently removed from all assessments prepared using the M&S manual. This practice was not endorsed by M&S. The City designed an ad-hoc adjustment outside of M&S that through a factor simply backed the GST out of the assessed value of an improvement. The factor was displayed under the heading "base rate multiplier" on the M&S Detail Report.

- The former relationship of M&S based cost assessments to “other” cost assessments is no longer relevant. Today, the majority of cost-based properties in the City including similar properties to the subject are assessed using the M&S manual complete with GST.
- The M&S manual “is a complete authoritative appraisal guide for developing replacement cost...” and as such includes GST in their local modifier for use in Canada.

[51] The Respondent advised the Board that the Appraisal Institute of Canada explains the cost approach as such: “the cost approach is used to estimate the market value of proposed construction, special-purpose or specialty properties, and other properties that are not frequently exchanged in the market. Buyers of these properties often measure the price they will pay for an existing building against the cost to build a replacement, minus the accrued depreciation, or the cost to purchase an existing structure and make any necessary modifications. If comparables sales are not available, they cannot be analyzed to estimate the market value of such properties. Therefore, current market indications of depreciated cost, or the costs to acquire and refurbish an existing building are the best reflection of market thinking and, thus, of market value”.

[52] The Respondent advised the Board that, with the exception of Wood Buffalo and Parkland County, all other major municipalities in Alberta include GST in their cost approach.

[53] The Respondent brought the Board’s attention to the M&S Valuation Service and stated that local municipalities for Canada also convert to Canadian currency using GST.

[54] The Marshal Valuation Service stated that replacement costs include labor, materials, supervision, contractor’s profit and overhead, architects’ plans and specifications, sales taxes and insurance and that all material and labor costs include all appropriate local, sales or GST taxes etc.

[55] The Respondent submitted that market cost assessments in Edmonton and the rest of Alberta are prepared on the basis of “replacement cost”. The definition of replacement cost in the International Association of Assessing Officers Property Appraisal and Assessment Administration is “the cost, including material, labor, and overhead that would be incurred in constructing an improvement having the same utility to its owner as the improvement in question, without necessarily reproducing exactly any particular characteristic of the property”.

[56] Appraisal of Real Estate Second Edition states, “To develop cost estimates for the total building, appraisers must consider direct (hard) and indirect (soft) costs. Both types of costs are essential to a reliable cost estimate. Indirect costs include such costs as ad valorem taxes during construction”.

[57] The Respondent addressed the CCRG. “The purpose of the guide is to assist company representatives in providing information needed by assessors to prepare assessments for regulated property”. Apart from the clear direction that this guide is for determining the assessment for regulated property and not market based properties, it also clearly points out that it is for determining the reproduction cost of the property, not the replacement cost. The Province made a conscious decision to exclude GST, which by its nature acknowledges that GST is typically included as part of the overhead mentioned in the definition of reproduction cost. It must be noted that the guide applies to regulated properties only and therefore is not relevant to the valuation on the market approach.

[58] The Respondent advised the Board that the Complainant's main argument is that it is an error to include GST in the cost approach. The Complainant refers to a number of cases throughout Canada, and references some revenue Canada documents relating to input tax credits. The position of the City of Edmonton is that the Complainant misrepresents the extent of the use of ITCs, misunderstands the reasons behind ITCs and how they are not related to market value, and that applying GST in the cost approach using the M&S manual is acceptable in the assessment process if done consistently, and has been accepted in various board decisions throughout Alberta.

[59] The Respondent examined the various cases from Alberta that relate to GST and stated that the following Alberta cases confirm that GST may be considered in the assessment process and provide guidance when GST has been accepted or rejected in the assessment process.

- *Shaske and Zeiner v. City of Calgary* MGB 130/97

The MGB findings in this case center on whether all similar properties were being treated in a similar way (equity). The decision stands for the proposition that if some similar properties have GST included in the assessed value, but others do not have GST in the assessment, the assessments are inequitable. While the case does not say that GST is acceptable in so many words, it appears to intimate that if all properties are treated the same way as it relates to GST; GST could be included in the calculation of market value.

- *Derbyshire Consultants v. City of Calgary* MGB 025/99

This case came subsequent to the decision in 130/97 and both references and builds on that decision. In this case the MGB stated that there was substantial evidence that all malls were now assessed using M&S, which includes GST in the calculation. The MGB specifically indicated that this was a different situation from what took place in 1997, and since there was no evidence that all malls were assessed in a similar way, that they would not exclude the GST. In other words by treating all properties in a similar fashion, there was no inequity.

- *Boccaccio v. Calgary* DL 020/02

The MGB found in this case, "In short, there must be reliable market evidence that GST is not part of the market value of the subject property. This has not occurred in this appeal." In other words, this case stands for the proposition that the onus to prove that GST should be excluded, and does not form part of market value, is on the Complainant. The Respondent said the Complainant will argue that they now have evidence that GST is not part of the market value of the property based on the operation of ITCs in the GST system. In a section below, the City has submissions of the operation of ITCs and the effect on market value. The position of the City is that the use of ITCs does not prove that they should be excluded from the market value of the property.

- *Mitchell v. North Shore/Squamish Valley Assessor, Area No.08*, 2002 Carswell BC 964

In this case the Board stated "The overriding theme of all of the expert opinions on behalf of the Assessor is that the payment of the net GST on new properties is a market factor that is taken into account by a purchaser in making a decision to buy a new or used property....Consequently, the Board finds that the best indicator of the market value of a new property is the GST inclusive price. As such, the Board finds that the Assessor was correct in its assessment of the property".

- *Banff Springs Hotel v. Town of Banff* MGB 079/03,

The MGB mentioned that the consistent use of one manual is preferred. It would not be reasonable to apply the costing portion of one manual with the depreciation tables of another. In addition, the same costing manual should be used for all similar properties within a municipality. This reasoning would, along with the decision in MGB 130/97, be consistent as it relates to the application of GST.

- *Gilmer v. Calgary* DL 036/04,

The findings include, “While there is little doubt the City does not discount the amount of GST paid from the sale price paid for a new home in its analysis of residential sales, there was no direct substantive evidence before the MGB to demonstrate the purchaser of a new residential property would be unable to recover the GST initially paid upon resale.” Based on this finding the MGB refused to reduce the assessment by the GST.

This case makes even more sense when you consider that GST is charged on the sale of new homes but GST is exempted for the resale of homes to avoid taxing a tax that was already built into the value of the property. This case again stands for the proposition that the Complainant would have to prove that GST does not form part of the market value of a property before a reduction is warranted.

- *MacBain Properties Ltd. v. Red Deer* CARB 0262-491/2012

The Board indicated that it was not provided with any evidence that the GST should be removed from the calculation in M&S. There was a reference within M&S that replacement cost includes sales tax, and the Board indicated that sales tax is equivalent or similar to GST so should be included unless there was evidence to the contrary.

- *1528670 Ontario Limited v. The Town of Okotoks* 0238/02/2012

The Complainant argued that since the property was assessed using the cost approach and GST applied incorrectly, the income approach should be applied. The Respondent agreed that GST was applied, and argued that GST was applied consistently throughout the municipality. The Board confirmed the assessment stating that all similar property was assessed in a similar manner throughout the municipality.

- *Singh v. Calgary* LARB 70100P-2013

While not specifically mentioning GST as an issue in this decision, the assessment review board accepted the purchase price, inclusive of GST, as the best indicator of value on a new home purchase. It therefore appears clear, that in the appropriate case, Alberta assessment tribunals have accepted the inclusion of GST as part of the market value of a property.

[60] In the submission of the City, the following propositions can be extracted from the above case law:

- If GST is applied, it needs to be applied consistently to all similar properties
- GST is commonly included in the value of new properties

- The Complainant would have to prove that GST did not form part of the market value of the property.
- It therefore appears clear, that in the appropriate case, Alberta assessment tribunals have accepted the inclusion of GST as part of the market value of a property.

[61] The Respondent advised the Board that the Complainant cited a number of court and board decisions to suggest that GST does not form part of market value. The Respondent stated that the Complainant provided an inaccurate portrayal as to the interpretation of the cases provided by the Complainant.

- *Tolko Industries Ltd. v. Big Lakes (Municipal District)* 1998 ABQB 51

The quote referenced by the Complainant in their material as a quote from the Court of Queen's Bench is incorrect. It is actually a quote taken from the MGB decision. This case never dealt with the question of whether GST was properly included in the assessment, but instead dealt with the question of whether investment tax credits were similar to GST and should be excluded from assessments. It is clear from the MGB decision that they believed GST was always refundable, but it is unclear why they had this belief. This may have been the position put forward by both parties, and an inaccurate assumption made by the MGB itself. In any event, this case is of limited use since the case does not deal directly with whether GST should be included in the market value of the property. The Queen's Bench decision in relation to this matter is of no assistance since it does not deal with the issue relating to GST but instead was dealing with the question of whether the MGB decision was correct as it related to ITCs.

- *New Brunswick (Executive Director of Assessment) v. Food City Ltd.* 2005 NBCA 65

The decision in this case was based on the fact that the Court believed that all potential purchasers would necessarily be HST registrants and therefore legally entitled to the full input tax credit. It is unclear how HST works in New Brunswick or why all users or purchasers would have to be HST registrants. HST is not necessarily the same as GST in this regard.

In Alberta, while there is GST, there is no HST. The evidence clearly shows that not everyone is entitled to GST input tax credits. This case is distinguishable on this basis.

In addition, there is no explanation in this case, why the fact that there are input tax credits that are refundable, is the same thing as whether the price of the HST is incorporated into the purchase price. The case is therefore distinguishable from the case before this assessment review board.

- *Assessor of Area #08 v. Wedley* 2000 BCSC 1365

In their submission, the Complainant quotes the decision of the Superior Court and implies that this decision means that GST must be excluded from the assessed value. The Court in this case was simply reviewing the decision of the tribunal and deciding, based on the evidence that was before the tribunal, whether the tribunal made a reasonable decision. In fact, the Court stated, "that is not to say that in a future case a different conclusion might have been reached on different evidence." This case is of limited assistance.

- *Winnipeg (City) Assessor v. Manitoba Lotteries Corp* [2005] MMBO 2409

This case was addressed in the Complainant's argument. The comment comes from the tribunal is that they will exclude GST given it is the end user that is responsible for the GST. However, it is not clear whether this Board was aware that not all owners are eligible for ITCs, nor whether the Board fully understood how income tax works. As such, this case is of limited assistance.

- *Memorial Gardens (Manitoba (Municipal) Assessor* [2012] MMBO 16

The Board in this case does not say it is standard practice to deduct GST when determining replacement cost, but does not explain upon what they are basing this decision other than the statement of one of the witnesses. In other words, there is no explanation in the decision of this tribunal why they feel that it is standard practice in Manitoba, and whether this practice is correct.

- *Memorial Gardens (Manitoba) Ltd. / Glen Eden Memorial Gardens Ltd. V. Manitoba (Municipal) Assessor* [2009] MMBO 111

In this case the tribunal relies heavily on other court decisions and bases its decision solely on those decisions. No independent thought by the tribunal appears to have gone into this issue, and it is not clear whether there was any evidence presented to the tribunal as it relates to GST and ITCs. Without an independent analysis within the decision and a description of the evidence as it relates to GST, this case is of limited assistance.

[62] The Respondent advised the Board that the Complainant states that other municipalities, including Wood Buffalo and Parkland County exclude GST. The Respondent stated that the Complainant has pointed out the exceptions that do not include GST, and not the majority of municipalities in Alberta that do include GST.

[63] The 2013 Metal Buildings Manual and the Work Camp Manual are cost manuals specifically related to metal buildings and work camps.

[64] The Respondent advised the Board that in *GSL Chevrolet Cadillac Ltd. v. Calgary (City)* 2013 ABQB 318 the Judge stated "GSL contends that the 30% reduction in value for environmental concerns was plucked out of thin air. The City argues it was a reasonable estimate reached in coordination with other numbers, though the City admitted it was unable to directly support the source of this value. However, *MRAT* grants the City some leeway in arriving at its assessments by providing an estimate of the value of the fee simple estate in the property to be made in coordination with the typical market conditions for similar properties. The CARB accepted the City's methodology as having done that. The CARB further accepted that the City had made a reasonable effort to account for environmental concerns. Conversely, the CARB found the GSL had failed to provide any evidence to show why this discount was incorrect or what the correct value should be. Including an estimate of one factor made in coordination with other indicators does not destroy the reliability of a global assessment; even more so when that global assessment is verified against a second estimate, using an alternative calculation." The Court found that the methodology used by the CARB in this case was reasonable because it was not an endorsement of an arbitrary approach. The Respondent stated that the approach used by the City with respect to the inclusion of GST in the cost approach for the assessment of properties was consistent.

[65] The Respondent noted that the Complainant's submission suggests that since the builder of a building will get any GST that they paid for the building back using ITCs that this means that GST is not part of market value. The position of the City is that this information does not

accurately portray how the GST ITC process works. There are a myriad of rules relating to the application and claiming of input tax credits in the GST system. In addition, there is no reason to believe and no proof by the Complainant that the application of ITCs actually affects market value. Instead, they make an unproven assumption that since some property owners can qualify for ITCs this affects the market for all properties as it relates to GST. This has simply not been proven.

[66] The Respondent advised the Board that the Complainant's evidence provided three reasons for providing a negative adjustment for the GST when the cost approach is applied: The Respondent's notes the Complainant's evidence is lacking:

- The argument about the CCRG is rebutted by pointing out this guide only applies to regulated property.
- The argument about other municipalities giving the adjustment is rebutted by pointing out that most municipalities include GST in cost calculations and there are only two municipalities that do not.
- The argument about ITCs is rebutted by showing that the rules in relation to ITCs are not as simple as the Complainant points out, and they are not always as applicable.

[67] The Respondent advised the Board that the Complainant failed to prove what they needed to prove, that the GST does not form part of the market value of a property under either the reproduction or replacement approach.

[68] The Respondent noted it is up to the Complainant to meet onus and prove that GST does not form part of market value. The Respondent stated the Complainant has not proven anything as it relates to the value of the subject property, and has therefore not met onus.

[69] In addition, notwithstanding it is not the responsibility of the municipality to prove that GST forms part of market value in the cost approach, there is evidence to suggest that it does. This includes evidence provided by the City showing that the M&S Manual suggests that all costs, including sales tax (of which GST is a sales tax), should be included in the cost approach.

[70] The Respondent stated that common sense suggests that since GST is payable at the time of purchase of a property, it forms part of the replacement or reproduction cost on a property.

[71] The Respondent stated that even if GST should not form part of the cost, the Complainant has made no attempt to show that the final assessed value, whether GST is included or not, is incorrect. The inclusion of GST is part of the methodology applied by the City but it is the final value which is under complaint, and not the methodology. The Respondent stated the Complainant has in no way proven that the final assessment is not at market value.

[72] The Respondent referred the Board to Calgary CARB decision 75757P-2014 and noted that the Board decided that it would be inequitable for the Respondent not to include GST in its assessment calculation for the subject, because the Respondent consistently includes GST in its calculations of "typical" assessed value for all other similar properties valued using M&S, as do many other municipalities in the province of Alberta.

[73] During summation, the Respondent agreed with the CARB decision 1937/2011-P that "the Board notes there is no legislated restriction relative to the 5% guideline, but the 5% is

included in MRAT s.10(3) that addressed the quality standard for the preparation of assessments.

[74] The Respondent asked the Board to confirm the 2014 assessment of the improvements to the subject property at \$9,168,000.

Decision

[75] The decision of the Board is to confirm the building assessment of \$4,626,526.

[76] The decision of the Board is to confirm the land assessment of \$4,541,822.

[77] The decision of the Board is to confirm the total assessment of \$9,168,000 for the subject property

Reasons for the Decision

[78] The subject property has been assessed utilizing the cost approach to valuation. The M&S Guide states that GST is to be included in the cost approach to valuing a property. The M&S Guide has been used consistently by the City in preparing assessments utilizing the cost approach and as such the methodology of the City in valuing the subject property and properties similar to the subject property is equitable.

Complainant's Case Law

[79] The Board is not persuaded by the case law submitted by the Complainant that the GST should be excluded from the value of the improvements due to the differences between the case law submitted by the Complainant and the subject property.

[80] It is difficult to place any weight on *Tolko Industries Ltd. v. Big Lakes (Municipal District)* (1998) A.J.No. 161 1998 ABQB 51, as it deals with the Federal Government Tax Credit (ITC) program and in the Board's opinion, the ITC and the GST are significantly different.

[81] With *New Brunswick (Executive Director of Assessment) v. Food City Ltd.* 2005 NBCA 65, it was decided that HST should not be included in the assessment valuation of the property and there were no reasons given as to the exclusion of the HST. HST may or may not have different rules relating to refunds than the rules relating to GST.

[82] As set out in *Assessor of Area #08 v. Wedley* 2000 BCSC 1365 although the court decided that there was no doubt the Board concluded that the amount of GST paid was not to be included in the assessment value of the property subject of the appeal, it did determine that in a future case a different conclusion might be reached on different evidence. In addition, this is a British Columbia decision.

[83] With *Winnipeg (City) Assessor v. Manitoba Lotteries Corp* [2005] MMBO 249 no reasons were given for the finding that GST was not to be included in the assessed value of the property subject of the appeal. Also different facts may lead to a different result as decided in *Assessor of Area #08 v. Wedley* 2000 BCSC 1365. In addition this was a Manitoba decision.

[84] With *Memorial Gardens (Manitoba) Ltd. v. Manitoba (Municipal) Assessor* (2012) M.M.B.O No. 16 BCSC 1365 while it was decided in this case that it is standard practice to deduct GST when determining replacement cost, there are no reasons provided upon which they

are basing this decision other than the statement of one witness. Also there are no reasons in the decision of the tribunal as to why they feel that it is standard practice in Manitoba and the basis upon which the practice is correct. In addition this was a Manitoba decision.

[85] With *Memorial Gardens (Manitoba) Ltd. / Glen Eden Memorial Gardens Ltd. V. Manitoba (Municipal) Assessor* [2009] MMBO 111 other court decisions were referred to and the decision in that case was based on those court decisions. It is not clear whether there was any evidence presented to the tribunal as it relates to GST and input tax credits. Without an independent analysis within the decision and a description of the evidence as it relates to GST, this case is of limited assistance. In addition this was a Manitoba decision.

[86] The *Composite Assessment Review Board* CARB 0262-491/2012 decision referenced by the Complainant which deals with the GST component of the improvement assessment found that GST should be included in the replacement cost of buildings in the absence of evidence and supporting argument to the contrary.

Respondent's Case Law

[87] The following Alberta cases presented by the Respondent provide some support for the inclusion of the GST. As cases presented from other jurisdictions were subject to tax treatment different to that in Alberta, the Board found the Alberta cases more comparable with only the GST as the issue. The other jurisdictions included GST/HST/PST.

[88] *Shaske and Zeiner v. City of Calgary* MGB 130/97. While the case does not say that GST is acceptable it deals with the importance of equity in the assessment of property.

[89] *Derbyshire Consultants v. City of Calgary* MGB 025/99. There was substantial evidence provided to the Board that comparable regional shopping malls were being assessed using M&S, which includes the GST in the calculation. The MGB specifically indicated that this was a different situation from what took place in 1997. By treating all properties in a similar fashion, there was no inequity.

[90] *Boccaccio v. Calgary* DL 020/02. The MGB found in this case that there must be reliable evidence that GST is not part of the market value of the subject property. This has not occurred in this appeal. In other words, this case stands for the proposition that the onus to prove that the GST be excluded, and does not form part of the market value, is on the Complainant. The position of the City is that the use of ITCs does not prove that they should be excluded from the market value of the property.

[91] *Singh v. City of Calgary* LARB 70100P-2013. While not specifically mentioning GST as an issue in this decision, the Assessment Review Board accepted the purchase price, inclusive of GST, as the best indicator of value on a new home purchase.

[92] The Board noted that the following Board decisions included the GST in the cost approach to the assessment of the value of improvements on a property.

- The CARB 0262-491/2012 decision also referenced by the Complainant which deals with the GST component of the improvement assessment found that GST should be included in the replacement cost of buildings in the absence of evidence to the contrary.

- The CARB 75757P-2014 decision presented by the Respondent in argument which deals with the GST component of the improvement assessment found that it would be inequitable for the Respondent not to include GST in its assessment calculation because it consistently includes the GST in its calculations of typical assessed value for all other similar properties valued using M&S.

Effect of GST on the Market Value of a Property

[93] Properties similar to the subject property are not actively traded in the marketplace. The Complainant provided no evidence that the GST has any effect on the market value of the subject property. There was no evidence provided that the subject property would have sold excluding the GST.

[94] The Board is mindful that both the Complainant and Respondent agreed that the 5% tolerance range is not a legislated standard that fetters the discretion of the Board in rendering a decision on a complaint. The 5% tolerance range is in MRAT and is considered a quality standard guideline that an assessor must meet when preparing assessments. The Board would be most reluctant to alter an assessment, or change an assessment, if the evidence indicates a change to the assessment within 5%. However, where the Board finds an error of calculation with the inclusion of GST in assessing the value of a property utilizing the cost approach the error can and should be corrected. The Board finds that there is no such error in this case.

[95] The issue of the complaint is whether the GST should be included in the value of the improvements. The relevant legislation in determining this matter, is MRAT, which states the following with regards to mass appraisal:

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 fee simple estate in the property, and
- (c) Must reflect typical market conditions for properties similar to that property

[96] The Complainant concluded that since the definition of improvements in the MGA does not include a reference to GST, the assessments for improvements should not include GST. However, the Board notes that the definition of improvement does not restrict the valuation of the improvements as suggested by the Complainant. The improvement is based on the valuation standard of market value and must meet the three requirements in MRAT 2(a)(b) and (c).

[97] The Board is mindful of the fact that all municipalities in Alberta include GST in their cost approach, except Wood Buffalo and Parkland County.

[98] The Board accepts the fact the CCRG is to assist company representatives in providing information needed by assessors to prepare assessments for regulated property. As this guide is for determining the assessment for regulated property and not market based properties, the guide is not relevant to the valuation of the subject property.

[99] As the 2013 Metal Buildings Manual and the Work Camp Manual are cost manuals specifically related to metal buildings and work camps they are not relevant to the valuation of the subject property

[100] While the Board is satisfied that eligible registrant can apply for ITCs, the Complainant did not establish what, if any, input tax credits the owner was either entitled to or did receive. In addition, no evidence was provided as to the typical amount of ITCs that the subject property was entitled to receive. This property, and all other similar properties, must be valued in accordance with MRAT 2(c) which requires that the assessment be prepared on typical market conditions.

[101] The Board is satisfied that eligible registrants can apply for ITCs. However, neither the Canada Revenue Agency form entitled Statement of Business or Professional Activities nor the memo from Dean Grubb and Shade Shomade of Deloitte & Touche LLP (which stated that a commercial developer (or any business) is eligible to claim ITCs related to expenses incurred on the construction of a new industrial or commercial facility, provided the facility will be used in a commercial activity) establish that 100% of the GST paid is refunded.

[102] The subject property and all similar properties were valued on a consistent basis using the M&S Valuation Guide that included the GST. The Board finds that when the subject property and all similar properties are valued in the same manner equity is maintained.

[103] There is no doubt the Complainant presented a number of arguments to support the position that GST should not form part of the assessment. However, the Complainant did not present sufficient nor compelling evidence for the Board to determine that the GST should not form part of the value of the subject improvement determined using the cost approach.

[104] While the Board is not bound by previous decisions of the Composite Assessment Review Board due note was taken of the following decisions by the Edmonton Composite Assessment Review Board

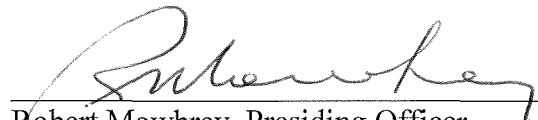
- 2014 ECARB 00753
- 2014 ECARB 00754
- 2014 ECARB 00755
- 2014 ECARB 00693

Dissenting Opinion

[105] There was no dissenting opinion.

Heard August 26, 2014.

Dated this 24th day of September, 2014, at the City of Edmonton, Alberta.


Robert Mowbrey, Presiding Officer

Appearances:

Brett Flesher, Altus Group
for the Complainant

Doug McLennan, City of Edmonton
Scott Hyde, City of Edmonton
Cameron Ashmore, Counsel
for the Respondent

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.

Appendix

Legislation

The Municipal Government Act, RSA 2000, c M-26, reads:

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)(r) “property” means

- (i) a parcel of land,
- (ii) an improvement, or
- (iii) a parcel of land and the improvements to it;

s 284(1)(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;

s 284(1)(l) “machinery and equipment” has the meaning given to it in the regulations;

s 284(1)(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 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, Alta Reg 220/2004, reads:

s 1(j) “machinery and equipment” means materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in

- (i) manufacturing,
- (ii) processing,
- (iii) the production or transmission by pipeline of natural resources or products or by-products of that production, but not including pipeline that fits within the definition of linear property in section 284(1)(k)(iii) of the Act,
- (iv) the excavation or transportation of coal or oil sands as defined in the *Oil Sands Conservation Act*,
- (v) a telecommunications system, or
- (vi) an electric power system other than a micro-generation generating unit as defined in the *Micro-Generation Regulation* (AR 27/2008),

whether or not the materials, devices, fittings, installations, appliances, apparatus, tanks, foundations, footings or other things are affixed to land in such a manner that they would be transferred without special mention by a transfer or sale of the land;

s 1(n) “regulated property” means

- (i) land in respect of which the valuation standard is agricultural use value,
- (ii) a railway,
- (iii) linear property, or
- (iv) machinery and equipment.

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.

Exhibits

- C-1 Appellant Disclosure and Witness Report of the Property Owner
- C-2 Appellant Rebuttal and Witness Report of the Property Owner
- R-1 Respondent's Brief
- R-2 City Legal Response to the Altus Argument Relating to Use of GST in the Cost Approach