# Edmonton Composite Assessment Review Board

**Citation: Edmonton Chevra Kadisha v The City of Edmonton, 2014 ECARB 00306**

**Assessment Roll Number:** 1108026
**Municipal Address:** 14710 156 STREET NW
**Assessment Year:** 2014
**Assessment Type:** Annual New
**Assessment Amount:** $7,845,500

Between:

**Edmonton Chevra Kadisha, represented by Shores Jardine LLP**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**
**Jerry Krysa, Presiding Officer**
**Howard Worrell, Board Member**
**Jack Jones, Board Member**

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## Procedural Matters

[1] In response to queries from the Presiding Officer, the parties indicated they did not object to the composition of the Board, and the Board members confirmed that they had no bias with respect to this matter.

## Preliminary Matters

[2] The Respondent concedes that the assessment is incorrect in part, as a result of an inaccurate site paving attribute. The Respondent asks the Board to reduce the assessment to $7,563,000.

## Background

[3] The subject property is a 29.281 acre parcel of vacant land. The property is zoned AGI, and has been assessed at its estimated market value as of July 1, 2013.

## Issue

[4] What is the correct valuation standard for the subject property?

**Position of the Complainant**

Witness Testimony:

[5] The Complainant's witness, Jerry Cooper, President of Edmonton Chevra Kadisha, provided evidence in respect of the historical and current uses of the land. The relevant facts, not in dispute by the Respondent, are summarized below.

[6] The subject property was purchased by the Complainant in 1996 for the purpose of a cemetery development at some point in the future.

[7] The Complainant leased the property in 1996 to a tenant for a period of 18 years, with conditions that the tenant would pay the property taxes and not use the property for any purpose that would affect the "agricultural use" designation of the property for municipal tax purposes.

[8] At some point during the lease, the tenant used the property for outdoor pipe storage, with the result that the property was assessed at other than agricultural use value for a number of years.

[9] In 2011 and 2012, the tenant sublet the property to a third party for the purpose of a hay crop, and the property was assessed by the Respondent at agricultural use value for the corresponding 2012 and 2013 taxation years.

[10] The lease was terminated and the tenant vacated the property in 2012.

[11] In 2013, the Complainant engaged an engineering firm to conduct Phase 1 and Phase 2 environmental testing to determine if the land was contaminated, and if so, to what extent. The testing indicated that approximately 0.44 of an acre requires some remediation.

[12] For the 2014 growing season, the subject has been leased to a tenant for the purpose of harvesting the existing hay crop.

[13] In re-direct, the Complainant's witness submitted that the property could have been farmed during 2013 without completing any environmental testing; however, the Complainant maintains that was not the right thing to do.

[14] In cross examination, Mr. Cooper conceded that there was no agricultural related lease in place at any point during 2013 and confirmed that no agricultural crop was seeded or harvested during 2013 as a result of the environmental testing underway. Mr. Cooper further conceded that any site contamination arose from the subject's non-agricultural use by the long term tenant prior to 2011, and not from the recent agricultural use by the sub-lease tenant during 2011 or 2012.

Argument:

[15] The Complainant argues that although the land was not used for farming operations during 2013, the subject property meets the qualifications to be assessed at agricultural use value.

[16] The Complainant submits that there have not been any development permit applications nor land development improvements such as stripping or grading of topsoil. The Complainant further submits that the owner's intent was that the property be used only for agricultural production, as demonstrated in the 18 year lease agreement that set out a clause, "no use other than agricultural uses".

[17] The Complainant maintains that the land was used for farming operations in 2011 and 2012, and will again be used for farming operations in 2014. The Complainant argues that as a result of the environmental testing undertaken, no farm operations could be carried out on the land in 2013, and further, the environmental testing was undertaken so the property could continue to be farmed, and productivity enhanced in the future. The Complainant offers that the subject was not exactly summer-fallowed; a common farm practice of taking land out of production for a season accepted by the Municipal Government Board as an integral farm operation, but the absence of hay crop production in 2013 was equivalent to allowing the land to rest, from an agricultural perspective.

[18] The Complainant argues that the Municipal Government Board (MGB) and several Composite Assessment Review Boards (CARB) have accepted that a parcel of land may be unused, or may be allowed to remain fallow in any given year and not lose its "farmland" status. In support of this position, the Complainant provided several Board decisions at Tabs 2 through 7 of exhibit C1.

[19] The Complainant requests an assessment of $831,000, reflective of the agricultural use value applicable to the 2013 tax year.

**Position of the Respondent**

[20] The Respondent offers that the facts of the matter as set out the Mr. Cooper's testimony are not in dispute.

[21] The Respondent submits that the legislation sets out the criteria for classification of AGI zoned land as either "non-residential" or "farmland", with the determination based on the property's use for farming operations, as defined in the regulation. Accordingly, a property may qualify as farmland, based on the use of the property in any given year.

[22] The Respondent argues that for the current year, the subject property should be assessed as non-residential land, as the undisputed fact is that the property was not used for farming operations by the Complainant, or by a tenant in 2013.

[23] The Respondent maintains that as the lands were used for hay production in 2011 and 2012, and will again be used for hay production in 2014, taking the lands out of production for environmental testing in 2013 was not a typical integral farm operation or agricultural requirement, but rather, a requirement necessitated by the historical industrial use of the property. The Respondent argues that, as a result, the environmental testing for industrial contaminants during 2013 is an industrial use, and should not be considered an agricultural use even if the lands may again be used for agricultural production in the future.

[24] In response to the Complainant's Board decisions, the Respondent argues that the decisions relate to properties that were never used for industrial purposes, unlike the subject property. The Respondent further argues that the decisions refer to properties that were either under lease to a farm operator during the year in dispute, or the activities performed were found to be an integral farm operation directly related to agricultural production.

[25] The Respondent requests that the Board accept the recommended assessment of $7,563,000, reflecting the market value of the property.

## Relevant Legislation

*Municipal Government Act,* RSA 2000, C. M-26

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

*Matters Relating to Assessment and Taxation Regulation* AR220/2004

**4(1)** The valuation standard for a parcel of land is
**(a)** market value, or
**(b)** if the parcel is used for farming operations, agricultural use value.

**1(i)** "farming operations" means the raising, production and sale of agricultural products and includes
**(i)** horticulture, aviculture, apiculture and aquaculture,
**(ii)** the production of horses, cattle, bison, sheep, swine, goats, fur-bearing animals raised in captivity, domestic cervids within the meaning of the *Livestock Industry Diversification Act*, and domestic camelids, and
**(iii)** the planting, growing and sale of sod;

**1(b)** "agricultural use value" means the value of a parcel of land based exclusively on its use for farming operations;

## Decision

[26] The Board finds that the subject property was not used for "farming operations" during the 2013 assessment year; therefore, the correct valuation standard for the subject property is market value.

[27] As the Respondent's estimate of market value was unchallenged by the Complainant, the Board accepts the Respondent's recommendation.

[28] Accordingly, the assessment is revised from: $7,845,500 to: $7,563,000.

**Reasons for the Decision**

[29] The valuation standard for a parcel of land is market value, unless the parcel is used for farming operations as defined in the regulation. In this instance, both parties agree that no farming operations were carried out on the lands in 2013, due to environmental testing for industrial contaminants.

[30] The Board accepts that the intention of the Complainant was to have the land used exclusively for agricultural purposes, and the Board accepts that land can be taken out of production for a season and be properly assessed at agricultural use value. However, the agreed facts demonstrate that notwithstanding the Complainant's intention, the lands were used for industrial purposes for a number of years and were assessed at the market value standard during that period.

[31] With respect to the use of the property in 2013, the assessment year in respect of this matter, the Board rejects the Complainant's position that taking the land out of agricultural production for environmental testing is akin to leaving the land fallow, a common agricultural practice accepted by the MGB and various CARB's as a "farming operation". The Board notes that fallowed lands are not simply taken out of production to rest from an agricultural perspective, but rather, are typically subject to continued agricultural practices throughout the fallow period including herbicide applications and or cultivation for weed control, fertilizer application and seedbed preparation for crop production the following year.

[32] The Board further rejects the Complainant's argument that the environmental testing for contaminants was carried out to enhance agricultural productivity, as there was no evidence to demonstrate a correlation between the testing activity and the future productivity of the land. In this instance, environmental testing for industrial contaminants may be considered good land stewardship, but the Board finds it is unrelated to the process of raising, production and sale of agricultural products and consequently, does not comply with the legislated definition of farming operations.

[33] The Board accepts the Respondent's position that a property may qualify as farmland based on the use of a property in any given year, as the assessment of property is a legislated annual function. The Board gave considerable weight to the agreed fact that the standard of assessment had been varied by the Respondent on an annual basis in prior years, reflecting the current use of the property in each of those assessment years.

Heard June 18, 2014.

Dated this 03th day of July, 2014, at the City of Edmonton, Alberta.

Jerry Krysa, Presiding Officer

## Appendix

**Appearances:**

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| For the Complainant: | Jerry Cooper, President, Edmonton Chevra Kadisha<br>Gwendolyn Stewart-Palmer (Counsel), Shores Jardine LLP |
| For the Respondent: | Luis Delgado, Assessor, City of Edmonton<br>Cameron Ashmore (Counsel), City of Edmonton |

**Exhibits**

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| C-1: | Complainant's Submission (incl. Witness Statement and Rebuttal) | - 93 pages |
| C-2: | Complainant's Submission (Environmental Testing Documents) | - 6 pages |
| R-1: | Respondent's Submission | - 55 pages |

*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.*