

## **Edmonton Composite Assessment Review Board**

**Citation: Gateway Real Estate Equities Inc as represented by Robert Gagne, AEC  
Property Tax Solutions v The City of Edmonton, 2014 ECARB 00559**

**Assessment Roll Number:** 10026911  
**Municipal Address:** 9803 12 Avenue SW  
**Assessment Year:** 2014  
**Assessment Type:** Annual New  
**Assessment Amount:** \$12,986,500

Between:

**Gateway Real Estate Equities Inc as represented by Robert Gagne, AEC Property Tax  
Solutions**

Complainant

and

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

Respondent

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### **DECISION OF**

**Willard Hughes, Presiding Officer  
Jasbeer Singh, Board Member  
Mary Sheldon, Board Member**

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### **Procedural Matters**

[1] When questioned by the Presiding Officer, the parties indicated they had no objection to the composition of the Board. In addition, the Board members stated they had no bias with respect to this file.

[2] Witnesses giving testimony were either sworn in or affirmed, the choice being that of the individual witness.

[3] With mutual agreement of the parties, evidence, argument and submissions were brought forward from roll numbers 10136494 and 10087852 to this file and carried forward from this file to roll numbers 10026914, 10038502 and 9977985, where relevant and applicable.

### **Preliminary Matters**

[4] During the hearing, the Complainant objected to the Respondent's surrebuttal on the following grounds:

- a. The surrebuttal had not been properly disclosed in accordance with the regulations. The Complainant cited ss. 8(2)(a)-(c) of the *Matters Relating to Assessment Complaints Regulation*, Alta. Reg. 310/2009 (*MRAC*), which govern the disclosure of evidence.

- b. Section 9(2) of MRAC prohibits the Board from hearing any evidence that has not been disclosed in accordance with s. 8.
- c. There is no reference to 'surrebuttal' in s. 8, and such evidence is therefore entirely inadmissible.
- d. While the Respondent was free to make necessary statements or arguments to "respond to or rebut" the Complainant's rebuttal, s. 8 cannot be violated to allow the inclusion of the surrebuttal.
- e. In response to the Respondent's reference to 2013 ECARB 00736, the Complainant stated that the previous Board erred in its findings and this Board needed to view the situation and weigh the evidence independently.

[5] The Complainant asked the Board to disallow the Respondent's surrebuttal as it did not comply with the legislation. While maintaining opposition to the introduction of surrebuttal by the Respondent, the Complainant advocated that the same be considered under s. 10 of MRAC, which deals with Abridgement or Expansion of Time.

[6] The Respondent stated that a statement that was not supported with evidence was just that, and carried no weight. Evidence was necessary to substantiate and support the statements made before the Board. The Respondent stated that s. 8(2)(c) does not specify any disclosure requirements that could prevent the presentation of the Respondent's surrebuttal at the hearing.

[7] The Respondent argued that to disallow the surrebuttal would be a breach of natural justice and would prevent the Board from seeing the complete story, which needs to be backed up by evidence.

[8] The Respondent presented 2013 ECARB 00736, which dealt with a similar objection to the Respondent's surrebuttal.

[9] The Board recessed, deliberated and rendered a decision. The Board decided that the surrebuttal would be allowed as it is clearly contemplated under s. 8(2)(c) of MRAC.

[10] The Board finds that statements or arguments made in surrebuttal will often require evidentiary substantiation to have any value. Therefore, the Respondent's right to "respond to or rebut" under s. 8(2)(c) would be illusory and meaningless if the Complainant's argument is accepted.

[11] The Board is not persuaded that s. 9(2) or 10 of MRAC are engaged with respect to surrebuttal. If the Complainant required more time to consider the information provided in surrebuttal, the proper remedy would be to request an adjournment under s. 15. The Complainant did not request an adjournment at any time.

[12] The surrebuttal was clearly made in response to evidence contained in the Complainant's rebuttal, and it is therefore admissible.

### **Background**

[13] The subject is a warehouse property zoned IB (Industrial Business). It is on a 252,962 sq. ft. (5.81 acres) lot and is located at 9803-12 Avenue SW in Ellerslie Industrial Neighbourhood.

The warehouse measures 97,174 square feet with site coverage of 38.41%. Finished area on the main floor is 15% of the total building area. The subject was built in 2006 and is assessed in average condition for a 2014 assessment of \$12,986,500.

[14] The Complainant has objected to the assessment on the grounds that it is inequitable and excessive.

### **Issue**

[15] Is the subject assessment correct?

### **Position of the Complainant**

[16] In support of the objection to the assessment, the Complainant presented documentary evidence to the Board and stated:

- a. The subject's assessment was appealed in 2013 and a reduction was granted by the Assessment Review Board in 2013 ECARB 00736.
- b. The same grounds for complaint still exist for the 2014 assessment.
- c. The time adjusted sale prices of the six comparable sales presented to the Board largely support an assessment of the subject at \$130/ sq. ft.
- d. However, the 2014 assessments of the six comparable properties are substantially below the time adjusted sale prices and show the Assessment to Sale Ratio (ASR) ranging from 0.71 to 0.94.
- e. The median of assessments of the comparable properties is \$108/ sq. ft., roughly 17% lower than the assessment of the subject property.

[17] The Complainant's argument based on the six comparable sales is:

- a. They had sold between November 2009 and October 2012.
- b. They have building sizes ranging from 100,018 sq. ft. to 163,800 sq. ft. and are comparable to the subject, which measures 99,576 sq. ft.
- c. The subject assessment of \$130/ sq. ft. represents the likely market value of the subject property.
- d. The 2014 assessments of all six comparable properties show ASRs of less than one. This indicates that the sales have been assessed lower than their corresponding time adjusted sale prices. However, the same is not true for the subject property, which has not sold. The subject's assessment at market value is higher than others and thus, inequitable.

The Complainant argued that in view of the above evidence, the subject property should also be assessed lower to be equitably assessed.

[18] The Complainant concluded by saying that the evidence before the Board indicates that the subject is over-assessed and requested the Board to reduce the subject assessment by 18% to \$10,648,930.

[19] During cross-examination by the Respondent, the Complainant agreed to exclude sale comparable #4 (located at 7612 - 17 Street), as the assessment included two buildings that had been assessed using the cost-approach. In such situations, while the assessed area of the buildings is clearly identified, the corresponding assessment value is not separately shown. Consequently, using the total area of dissimilar buildings and valuations to derive per square foot value of assessments does not provide reliable results.

### **Position of the Respondent**

[20] In defending the assessment, the Respondent presented evidence that included an assessment brief and a Law & Legislation brief. The assessment brief included sets of sales and equity comparables as well as a critical analysis of the Complainant's sales comparables.

[21] Analyzing the Complainant's table of six sales, the Respondent stated the following:

- a. Removal of just one flawed sale comparable (located at 7612 – 17 Street) from the table of six properties results in a different median value for the ASR (0.87 instead of 0.82) and consequently, a different requested assessment value. This, in the opinion of the Respondent, shows how small sets of comparable properties can produce completely unreliable outcomes.
- b. The building sizes in respect of sale comparable #1 (located at 12908 – 170 Street) and comparable #5 (located at 4103 - 84 Avenue) were incorrect and were not consistent with the assessed building sizes.
- c. The lot size in respect of sale comparable #1 (located at 12908 – 170 Street) shown in the table (10.04 acres) was inconsistent with the size (6.10 acres) stated in the Commercial Edge sales document on page 31 of C-1.
- d. Sale comparables #1, #2 and #3 included in the table in the Complainant's evidence package were located in a different part of the city and in a different market area with lower market valuations.
- e. Sale comparables #4 and #5 were sufficiently dissimilar in terms of age such that they could not be relied upon for providing dependable reference points for the subject assessment.
- f. The site coverage of 54% in respect of the Complainant's comparable #5 was considerably higher than the subject property's site coverage of 38%, and thus, dissimilar for the purposes of comparison.
- g. Sale comparable #2 (18507 104 Ave) has a finished office space measuring 6% of the total. This is considerably less than the subject's 15% finished office space, which adds value to the subject property.

- h. The assessed area of the subject property is 97,174 sq. ft. and not 99,576 sq. ft. as indicated in the Complainant's evidence package.

The Respondent argued that such questionable or flawed data in respect of substantially dissimilar properties could not be relied upon to prove that the subject assessment is incorrect.

[22] The Respondent presented a table of five sale comparables, three of which (#1 at 18507 104 Ave; #2 at 12908 170 St; and #3 at 4103 84 Ave) are also included in the Complainant's set of sale comparables.

[23] The Respondent stated that the most significant factors affecting value for industrial properties, in descending order of importance are:

- Main Floor Area
- Site Coverage
- Effective Age
- Location
- Condition
- Main Floor Finished Area
- Upper Finished Area

[24] An analysis of the comparable properties indicates that all but one of the Complainant's comparables are inferior to the subject property and cannot provide a reliable indication of the subject property's market value.

[25] Two of the Respondent's sale comparables (also included in the Complainant's set), were shown to be superior to the subject property and the other three were inferior properties. The range of time adjusted sale prices indicated that the subject assessment was well within the range of values.

[26] The Respondent also provided a set of six equity comparables that had similar location attributes as the subject (location group 18), whose 2014 assessments ranged from \$129/ sq. ft. to \$165/ sq. ft. of the main floor area and supported the subject assessment at \$134/ sq. ft.

[27] The Respondent provided three groups of ASR values in respect of industrial properties in location groups 17, 18 and 20. The number of properties in each group varied from 12 to 101. The ASR values ranged from a low of 0.48 to 1.80. The Respondent argued that it was necessary that any properties that have changed since the last sale, be excluded and all remaining valid properties from a stratum be included in the analysis for reliable results. The more properties that are examined, the more meaningful the ASR study. The Respondent asserted that the legislation contemplates looking at the full stratum of property for a given group.

[28] With reference to the Complainant's set of sale comparables and ASRs, the Respondent argued that if anything, the Complainant's study shows that there are a small number of properties in the City of Edmonton that are under-assessed. Since the assessment model of the City assesses all similar properties in the same way, taking the argument of the Complainant to its logical conclusion means that the subject property is also similarly under assessed and thus, if anything, the subject's assessment is already too low. The City, of course, does not agree with this and feels that the subject property is correctly assessed.

[29] The Respondent emphasized that the type of ASR analysis suggested by the Complainant is not contemplated under the legislation and the sample chosen by the Complainant is not large enough to be meaningful. The Respondent therefore submitted that the Board should place little or no weight on the Complainant's ASR analysis.

[30] The Respondent concluded by requesting the Board to confirm the 2014 assessment of \$12,986,500.

### **Complainant's Rebuttal**

[31] Rebutting the Respondent's defence of the subject assessment, the Complainant presented a composite table of seven sale comparables that included five of the sales comparables presented by each party, with three common properties. The Complainant argued that the subject assessment needed to reflect the pattern of ASRs evident from a review of the seven comparable properties in the table.

[32] Sale comparable #1 (located at 12959 – 156 Street) with a building size of 100,018 sq. ft. was the smallest among the properties in the table and came closest to the subject property (97,174 sq. ft.). The Complainant argued that its ASR of 0.72 clearly demonstrated that it was under-assessed, like all other sale comparables in the table. The principle of equity therefore warranted that the subject assessment be reduced to make it equitable with these comparable properties.

[33] The Complainant plotted the ASR values included in the Respondent's evidence and stated that a relatively small number (23 out of 87 for group 17 and 30 out of 101 for group 18) fell in the legislated range between 0.95 and 1.05. This, in the Complainant's opinion, demonstrated that the system of assessments did not produce acceptably equitable outcomes. The Complainant further argued that the City's methodology is twice as likely to predict a value that is not reflective of actual market value, as it is to predict a value that is within 5% of that actual market value (time-adjusted selling price).

[34] Relying on the 0.88 median value of ASRs in respect of the seven comparable properties, the Respondent requested the Board to reduce the subject assessment to 88% of the assessed value to make it equitable.

### **Respondent's Surrebuttal**

[35] In response to the Complainant's Rebuttal, the Respondent relied on an explanation of the central tendency, measure of dispersion and coefficient of dispersion underlying ASR methodology and its analysis. The Respondent stated:

- a. "It is expected that some properties will have quite high or low ASR values and this is reflective of the variance that occurs naturally within the market place."
- b. "What is important is that the population of assessed values be centered around their time adjusted sale prices (median ASR), and that the rest of the assessed population fall within acceptable limits around that central measure."

- c. "A biased sample is one that is specifically selected for a given criteria, such as, all having a high or all having a low ASR value. This type of biased sampling is not contemplated in the legislation, is not statistically meaningful and is deliberate misuse of the median ASR and/or coefficient of dispersion requirements."

### **Complainant's Summary**

[36] In summation, the Complainant stated:

- a. The measures of central tendency and the coefficient of dispersion are irrelevant to the issue before the Board and the Respondent's surrebuttal was an attempt at misdirection.
- b. The 2014 assessments in respect of the sale comparables were all lower than the corresponding time adjusted selling prices.
- c. The Respondent acknowledged that the newer buildings (built during 2011 – 2013) were over-assessed; by the same token, the evidence confirms that the group of properties, to which the subject property belongs, is under-assessed and therefore, the subject property's assessment at its market value, is not equitable.
- d. The Complainant referenced some previous Board decisions, which, in the Complainant's opinion, looked at the process of assessment and not the inequities within a group of properties.
- e. The property assessments needed to be set at the lower of the market value or equity, and in the Complainant's opinion, the Board needed to restore equity by lowering the subject assessment.
- f. The subject assessment is at market value. However, the best available sale comparables indicate that their 2014 assessments are substantially below their respective time adjusted sales prices, and that makes the subject assessment excessive and inequitable.
- g. The Respondent's assertions that the 2014 assessments had passed the provincial audit did not, in the Complainant's opinion, mean that the subject had been assessed correctly and equitably.
- h. The Complainant discounted the Respondent's equity comparables and requested the Board to place more weight on the sale comparables that provided a better indication of the actual market conditions.

[37] In conclusion, the Complainant requested the Board to make the 2014 subject assessment equitable by reducing it by 12% to \$11,428,120 .

### **Respondent's Summary**

[38] In summation, the Respondent stated:

- a. The Complainant prefers to ignore the subject's market value while focusing on under-assessment of a set of sales comparables. In the Respondent's opinion, the subject property is already correctly assessed or under assessed.

- b. If a group of properties is under assessed, and the subject property is a part of the group, it is reasonable to conclude that the subject is also under-assessed.
- c. The Complainant has not provided any evidence with respect to the market value of the subject property. In the composite table of seven sale comparables, only #1, #3 and #4 (12959 156 St; 12908 170 St; 18507 104 Ave) are valid comparables and these, with time adjusted selling prices of \$160/ sq. ft, \$153/ sq. ft and \$159/ sq. ft, suggest that the market value for the subject property is in the range of \$153 - \$160/ sq. ft. Clearly, the subject assessment is at the low-end of the market value.
- d. Market value is a range and the subject property is assessed at the bottom end of the range.
- e. It has been demonstrated that in a small set of comparables, the median values can change dramatically when one comparable is added or removed from the sample. Quite appropriately, the standards require that the entire strata be used for the assessments and analysis.
- f. There is no evidence before the Board that the subject property has been modeled differently or treated differently; on the contrary, all properties in the group have been treated in a similar manner.

[39] In conclusion, the Respondent requested the Board to confirm the 2014 assessment of \$12,986,500.

### **Decision**

[40] The Board confirms the 2014 assessment of \$12,986,500.

### **Reasons for the Decision**

[41] The Board noted that the only issue to be dealt with was one of equity, in that;

- a. The Complainant's set of sale comparables showed that the Assessment to Sales Ratio (ASR) ranged between 0.72 and 0.94, and this indicated that the assessments were lower than the corresponding market values.
- b. The Complainant suggested that the subject property's assessment was at its market value, but higher than the assessments of other comparable properties. This, in the Complainant's view, suggested the subject was inequitably assessed.

[42] The Board understands that the subject property has not sold since it was built in 2006. As such, there is no actual market data to establish its real market value or its relationship with the assessment value. The Board was not provided with any evidence or argument to support the contention that the subject property had been treated differently than other similar properties in the same group by the City's assessment model.

[43] No evidence was placed before the Board to support the Complainant's contention that application of typical market values to the entire assessment group of properties had produced inequitable results, only in the case of the subject property.



[44] The City relies on data in respect of recent validated sales to produce typical assessment values for all properties in the group. The Board was persuaded by the Respondent's explanation that the assessments of properties, even in the same group, could differ substantially, owing to the differences in contributing factors or characteristics; but to satisfy the provincial audit the median ASR of the group must fall within the 0.95 to 1.05 range and the scatter of other values must be contained well within the permissible limits.

[45] The Board finds that applying some ASR values from one end of the spectrum to a property at a different point in the spectrum would cause fresh, undesirable inequities. The Board is satisfied that the entire strata of properties must be processed together to produce statistically reliable results and a small sub-set of values cannot be relied upon to provide a correct indication of the subject property's market value.

[46] The Board accepts the Respondent's contention that the sale comparables #2, #5, #6 and #7 on the Complainant's composite chart (C-2) are inferior to the subject property because of the differences in age, site coverage, building size or location and could not be relied upon to determine the market value of the subject property.

[47] The Board finds that sale comparables #1, #3 and #4, in the same composite chart, although located in a relatively inferior industrial location (group 17), are somewhat similar to the subject property in terms of age and building size. The 2014 assessments for these properties are \$116, \$146 and \$124 per sq. ft. of the main floor area. The subject's assessment at \$134/ sq. ft. of the main floor area falls well within the range of assessments for properties in inferior locations.

[48] The Board is persuaded by the Respondent's argument that if there are a small number of properties in the City that appear to be under-assessed and the assessment model treats all similar properties in the same way, it would be logical to conclude that, if anything, the subject property is also equally under assessed and hence, equitably assessed.

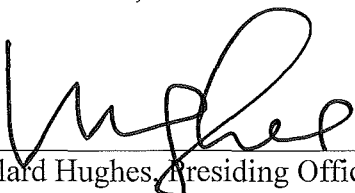
[49] With no evidence to the contrary, the Board believes that the City's assessment model treats all similar properties in a similar and equitable manner and accepts the City's assessed value of \$12,986,500 to be correct and equitable.

### **Dissenting Opinion**

[50] There was no dissenting opinion.

Heard August 19, 2014.

Dated this 8<sup>th</sup> day of September, 2014, at the City of Edmonton, Alberta.

  
Willard Hughes, Presiding Officer

**Appearances:**

John Smiley  
for the Complainant

Cam Ashmore  
Jason Baldwin  
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 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.

**The *Matters Relating to Assessment Complaints Regulation*, Alta. Reg. 310/2009, reads:**

s 8 If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 42 days before the hearing date,
  - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
  - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant’s evidence;
- (b) the respondent must, at least 14 days before the hearing date,
  - (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

s 9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

***The Matters Relating to Assessment and Taxation Regulation, Alta. Reg. 220/2004, reads:***

s 10(1) In this section, "property" does not include regulated property.

(2) In preparing an assessment for property, the assessor must have regard to the quality standards required by subsection (3) and must follow the procedures set out in the Alberta Assessment Quality Minister's Guidelines.

(3) For any stratum of the property type described in the following table, the quality standards set out in the table must be met in the preparation of assessments:

Property Type	Median Assessment Ratio	Coefficient of Dispersion
Property containing 1, 2 or 3 dwelling units	0.950 - 1.050	0 - 15.0
All other property	0.950 - 1.050	0 - 20.0

(4) The assessor must, in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines, declare annually that the requirements for assessments have been met.

**Exhibits**

- C-1 – Complainant's Brief (36 pages)
- C-2 – Rebuttal (18 pages)
- C-3 – Case Law (62 pages)
- R-1 – Respondent's Brief (93 pages)
- R-2 – Surrebuttal (9 pages)