Edmonton Composite Assessment Review Board

Citation: Altus Group for 1238117 Alberta Ltd v The City of Edmonton, 2014 ECARB 01243

Assessment Roll Number:	10171018
Municipal Address:	10010 12 Avenue SW
Assessment Year:	2014
Assessment Type:	Annual New
Assessment Amount:	$20,918,500

Between:

Altus Group for 1238117 Alberta Ltd

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Shannon Boyer, Presiding Officer
Brian Hetherington, Board Member
Jasbeer Singh, Board Member

Procedural Matters

[1] The Board members stated that they had no bias with respect to this file. Upon questioning by the Presiding Officer, the parties stated that they had no objection to the composition of the Board. Witnesses gave evidence under oath.

Preliminary Matters

[2] The Complainant objected to the inclusion of the paired-sales information contained on pages 33-34 of the Respondent's disclosure on the grounds that there was not enough information included as to what the Respondent's argument would be, to enable an informed rebuttal. The information provided with respect the cited properties was deficient and could result in a possible misinterpretation and incorrect inferences or conclusions. The Respondent submitted that exhibit R-2 speaks about a paired sales analysis and it would be obvious on the face of the document what this evidence was.

[3] The Board decided that these pages were disclosed in sufficient detail to allow the complainant to prepare a response. The inclusion of tax roll numbers for the list of properties in the Respondent's disclosure provided sufficient means to access any other relevant information desired and as such, exclusion of the information on pages 33-34 was not necessary for a fair hearing.

[4] The Respondent objected to the inclusion of pages 26-29 and 76-77 in the Complainant's Rebuttal package (Exhibit C-2), on the grounds that information contained therein, did not rebut anything that was in the Respondent's disclosure package. The Complainant withdrew pages 26-

29 and the Board decided to exclude pages 76-77 for the reason that the information did not rebut the Respondent's evidence.

Background

[5] Known as Four Points Sheraton, the subject is a hotel built in 2011 and is located at 10010 – 12 Avenue SW, in Ellerslie Industrial neighbourhood in Edmonton. Due to insufficient income data, the subject is assessed using the cost approach, based on Marshall and Swift. The 2014 assessment is $20,918,500 and the requested value is $20,004,500.

Issues

[6] Did the Respondent err by including the value of the GST in the estimate of the replacement cost of the improvement?

Position of the Complainant

[7] The Complainant presented documentary evidence, including Board decisions and case law, and a rebuttal document.

[8] The Complainant informed the Board that the subject was valued on the cost approach using Marshall and Swift Valuation Guide (Marshall and Swift), a manual that provides cost data for determining the typical replacement cost of buildings and other improvements and the development of assessments.

[9] The Complainant began the presentation by identifying things that are assessable under the *Municipal Government Act* (MGA) and s 1 of the *Matters Relating to Assessment and Taxation* (MRAT) and these include property, improvement, structure and machinery and equipment. The Complainant concluded that under the legislation, the definitions of property, improvement, structure and machinery and equipment do not include GST, therefore, GST should not be included in the assessment.

[10] The Complainant submitted that GST does not add value to an improvement, therefore it should not be included in the market value of the improvement.

[11] The Complainant stated that in previous years, the Respondent applied a base rate multiplier (BRM) of 0.9524 to the Marshall and Swift calculation, to back the GST out of the calculation. The Complainant informed the Board that the Respondent changed its policy in the 2014 tax year and did not apply a 0.9524 BRM to the subject or any of the properties in the cost approach inventory. The Complainant presented a 2013 Commercial Detail Report (CDR) for 13232-170 Street showing a BRM of 0.9524 and the 2014 CDR for the same property showing a BRM of 1.000, resulting in no negative adjustment for the inclusion of the GST in the cost of replacement.

[12] The Complainant named two Alberta municipalities that did not apply GST when using the cost approach, Wood Buffalo and Parkland County, which developed their own cost manuals suited to their local needs. The City of Calgary also previously applied a BRM of 0.9524 to account for GST when using the cost approach to value, but also changed its policy in 2014. The Complainant argued that there has been no change in legislation, court decisions, or change to GST rules to trigger the change in the Respondent's policy.

[13] The Complainant argued that GST is a flow through tax and is never actually paid by the owner or purchaser of buildings; therefore, GST should not be included in the cost of replacement. The vast majority of owners of this type of commercial property are GST registrants and entitled to collect and remit GST. The Complainant explained that an owner is entitled to a credit for the GST that it pays for materials and services incurred in the cost of construction. By paying GST, then receiving credit for GST, a purchaser is not actually incurring a cost for GST. If an owner is not incurring GST then GST is not a cost and should not be included in the replacement cost calculation. Market thinking would dictate that as a GST registrant, a potential buyer will not pay GST if it were included in the value of the improvement.

[14] The Complainant presented a memo from Deloitte to Altus Group dated June 25, 2014 in support of its argument that the GST is a flow-thru tax. The memo 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 ITCs are claimable as the GST is paid on expenses and can be claimed on the registrant's GST return.

[15] The Complainant argued that by failing to apply a BRM to back the GST out of the cost of replacement, the Respondent is taxing a tax, which is unacceptable. The Complainant stated that tax on a tax is avoided and used the example that in provinces having provincial or harmonized sales tax, GST is not charged on the provincial sales tax.

[16] On questioning by the Respondent, it was noted that the Complainant did not present any evidence that the owner of the subject was entitled to, applied for or received tax credits so it could not be determined if all the GST incurred in the cost of construction of the subject, flowed through.

[17] In rebuttal, the Complainant argued that in the same jurisdiction, regulations governing all assessment schemes, including regulated property, ought to be similarly interpreted and applied for the sake of consistency and fairness. Reference was made to the Alberta Metal Buildings Cost Manual and the Alberta Construction Cost Reporting Guide (CCRG), used for regulated properties, which make a specific exclusion of the GST from the Project Costs (except Pre-construction and the Post-construction costs). Section 2.300.600 of the CCRG pertaining to GST states: "The GST paid on construction materials and services is excluded."

[18] The Interpretive Guide to the 2005 CCRG, which also deals with regulated property, also specifically excludes GST: "The GST paid on construction materials and services is excluded. 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."

[19] The Complainant directed the Board's attention to a number of Board decisions and cases that, in its opinion, supported its argument that GST should be backed out of the cost of replacement:

[20] In *Winnipeg (City) Assessor v Manitoba Lotteries Corp.* (Order No. A-05-236) the Municipal Board of Manitoba noted that the Board did not include the GST:

> 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. (para 50)

[21] *Tolko Industries Ltd. v. Big Lakes (Municipal District),* 1998 ABQB 51 makes reference to a MGB decision which was upheld:

> ... 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. (para 11)

[22] In *Executive Director of Assessment v. Food City,* 2005 NBCA 65 the NBCA upheld the NBQB decision to exclude Harmonized Sales Tax (HST) from reconstruction cost calculations saying that calculating the value including the HST:

> affirms that a prudent buyer would pay no more for a property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay. (see Real Estate Appraisal in Canada, at p. 14.2) (para 42)
>
> The assessment would be artificially inflated and lose any rational connection to "reality" and "truth". It would, as the Board noted, be an affront to common sense (para 45)

[23] In *Assessor of Area 8 v. Wedley* (2000), BCSC 1365 Justice Lowry states:

> The question was as the Board framed it: In estimating the value of the property for assessment purposes, is it proper appraisal practice to include an amount paid 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. (para 26)

[24] In *Memorial Gardens (Manitoba) Ltd. v. Manitoba (Municipal) Assessor* (2012) M.M.B.O No. 16, Acting Chair Walder states:

> .... the Owner's Agent, Mr. David Sanders, apparently accepts the PMA's estimated Replacement Cost New (RCN) of the structural improvements but does not agree that GST should be included in the RCN. (para 9)
>
> The Board agrees with Mr. Sanders that it is now standard practice to deduct GST from the estimated costs when determining the RCN (para 10).

[25] In the Complainant's materials, but not orally presented, the Central Alberta Regional Assessment Review Board's Decision in *McBain Properties Ltd. v. The City of Red Deer* (0262-491/2012) found that GST should be included in the replacement cost of improvements, based on the inclusion of sales tax within the definition of replacement cost.

[26] The Complainant informed the Board that the requested assessment was within 5% of the assessment. It was acknowledged that where a requested reduction is less than 5%, the Board may not change the assessment. Board decisions were presented to establish that there is no legislated restriction relative to the 5% guideline and that the Board can alter an assessment where there is an error in calculation or where there is compelling evidence.

[27] In conclusion, the Complainant requested the Board to exclude the GST from the assessed value of the improvements and reduce the 2014 assessment to $20,004,500, which is a 4.36% difference in the assessment of the subject.

Position of the Respondent

[28] Defending the 2014 assessment, the Respondent presented an Assessment Brief and a 'Legal Response to the Altus Argument Relating to the Use of GST in the Cost Approach' in support of its position.

[29] The Respondent is legislated to assess based on market value. Where market value cannot be determined due to lack of data or other circumstances, the assessment derived from the cost approach to value is accepted as market value. Replacement cost is defined in the International Association of Assessing Officer Property Appraisal and Assessment Administration (PAA) 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". The Respondent quoted Appraisal of Real Estate Second Editions as follows: "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." Ad valorem tax is defined in the PAA as a tax levied in proportion to the value of the thing(s) being taxed and in Wikipedia as a tax typically imposed at the time of transaction such as sales tax or value added tax. It was argued that GST is an ad valorem tax which is properly included in the calculation of replacement cost.

[30] The subject is assessed using the cost approach based on Marshall and Swift which is a respected valuation manual that uses typical construction costs. The Respondent confirmed that Marshall and Swift defines replacement cost of a building as the total cost of construction required to replace the building and include the cost of labor, materials, supervision, contractor's profit and overhead, architect's plans and specifications, sales taxes and insurance. As a sales tax, GST is considered to be a cost that is incurred to replace the improvement and therefore, is properly included in the cost calculation. The Respondent reminded the Board that the purpose of applying the cost approach is to determine the best estimate of the value of the improvement which is accepted as market value for the purpose of assessment.

[31] The Respondent asserted that it did not err in applying a BRM of 1.0 to the Marshall and Swift calculation, rather than a BRM of 0.9524 when assessing the subject and all other properties assessed on the cost approach in 2014 . The action is consistent with the valuation process mandated by legislation. The vast majority of Alberta communities do not deduct the GST when calculating assessment using Marshall and Swift.

[32] Prior to 2014, the City opted to exclude GST from cost based assessments, using an ad hoc BMR of 0.9524, because prior to the introduction of the Marshall and Swift, assessments of the cost based inventory were prepared using a variety of antiquated provincial cost manuals, most of which predated GST or did not contemplate an allowance for GST. In order to ensure

valuation consistency and equity among cost based properties, the GST included in Marshall and Swift calculations was backed out using a base rate multiplier of 0.9524. This practice was not endorsed by Marshall and Swift, but was implemented in response to Board decisions disallowing inequitable assessments arising where properties were assessed using different cost manuals. The BRM of 0.952 was displayed under the heading of "base rate multipliers" on the Marshall and swift Commercial Detail Report and is replaced with a BRM of 1.0.

[33] Over time, the Respondent has converted the cost based inventory to Marshall and Swift. For the 2014 tax year, the majority of cost based properties in the City, including all properties similar to the subject, were assessed using Marshall and Swift. As a result the Respondent is now in a position to include the GST equitably in its cost based assessments. Because GST is applied consistently, it results in a consistent equalized assessment. To back out the GST for the subject, would be inequitable and inconsistent for other properties similar to the subject.

[34] The Respondent argued that market value contains a component of GST and presented a list of 21 paired-sales of residential properties to demonstrate how the GST paid at the time of the first sale was, not paid by subsequent home buyers. The Respondent suggested that the subsequent sales incorporated that GST in the selling price. The GST became part of market value. The Respondent argued that while it might be difficult to determine the percentage of GST within the market value as a property trades, market thinking would dictate that a business or home owner would not absorb the cost of GST, but would pass the cost of GST to the purchaser on sale of the property and GST becomes part of market value. The Respondent pointed out that the Complainant did not present any evidence that GST does not form part of market value.

[35] The Respondent stated that, if each and every time a building was built, the GST was 100% refundable with tax credits, the Federal Government would have no reason to charge GST in the first place. The Federal Government does charge GST and in some cases the GST is refunded, however, it is never directly refunded. So long as GST is charged on construction of improvements, GST is a component of market value.

[36] In response to a suggestion by the Complainant that GST does not add value and should not be included in the cost calculation, the Respondent stated that Marshall and Swift includes GST and other components not typically considered to add value, such as contractor's profit. The Respondent stated that the proper assessment question is not, does an item add value to an improvement, but rather what is the cost to replace an improvement? In this case, to replace the improvement, GST is payable.

[37] The Respondent pointed out that the Complainant does not dispute the use of Marshall and Swift in determining replacement cost nor does it challenge the correctness of including GST in the Marshall and Swift calculation. Rather, the Complainant objects to the Respondent's change in the BRM and the Complainant did not present any evidence that the Respondent erred in doing so.

[38] In response to the Complainant's argument that the GST flows through the improvement, the Respondent cautioned the Board that the Complainant and the Respondent are not experts in the area of GST, and that the Complainant could be misinterpreting or misunderstanding how GST might affect market value. The Complainant's representations, in the absence of an expert, are not reliable.

[39] The Respondent asserted that a scheme for GST credits has no effect on the replacement cost of an improvement. Current federal legislation may allow certain tax payers to apply for GST tax credits, but this is unrelated to the market value of improvements. GST tax credits have time limits, exceptions, not everyone qualifies for credits, and not all credits are claimed, therefore, the theory that GST always flows through to the end user and that the owner never pays GST, is flawed. Even if it were so, the process of claiming credits is a business decision relating to a Federal tax scheme that does not affect market value or an assessment.

[40] In answer to the Complainant's position that it is unacceptable to tax a tax, the Respondent pointed out that citizens use after tax dollars to pay for GST and that many items on which GST is paid, have hidden taxes. The Respondent explained that the owner is taxed on an assessment, a best estimate of the replacement cost for an improvement. The cost approach yields a value that is accepted as market value for assessment purposes. The owner is not being taxed on a tax, the owner is being taxed on an estimate of market value.

[41] The Respondent pointed out that the cost manuals referenced by the Respondent, such as the CCRG, are used to assess regulated properties which are treated very differently than unregulated properties. Regulated properties are defined clearly in section 1(n) of MRAT and they enjoy many adjustments. Section 2 of MRAT sets out how unregulated improvements are assessed.

[42] The Respondent cautioned the Board that the Complainant misinterpreted Board decisions and case law presented and took the Board through the same cases distinguishing them from the case at hand. The Respondent summarized the Complainant's cases as not actually considering GST as an issue and as being from out of Alberta, with differing legislation, assessment regulations and policies.

[43] The Respondent cited two 2014 Calgary CARB decisions (CARB 75718P-2014 and 775757P-2014) wherein Boards that were presented with similar evidence to this hearing, found that the Complainant had not proven that GST is not a component of market value. In those cases, the Complainant failed to shift the onus and the assessments were confirmed.

[44] The Respondent cited several other cases as follows:

- In *Bruno Boccaccio v Calgary*, MGB No. 020/02 the MGB stated that there must be reliable market evidence that GST is not part of the market value of the subject property and the onus is on the Complainant to prove that GST should not be excluded.

- In *Mitchell v North Shore/Squamish Valley Assessor, Area No 8*, 2002 BC 964 the assessment board accepted expert evidence that the inclusion of GST is commonly accepted in the market place on the sale of new properties.

- In *Richard and Karen Gilmer v. Calgary* DL No. 036/04 the MGB refused to reduce the GST on the basis that the Complainant had to prove that GST did not form part of market value before a reduction is warranted.

[45] In summation, the Respondent cautioned the Board that the Complainant has the onus of proof to show that the assessment is incorrect. The Complainant did not raise any evidence to establish that changing the base modifier to 1.0, resulted in an incorrect assessment. The Complainant did not bring evidence in the form of an expert, studies, other authority or evidence that GST does not form part of market value of the subject. Even if the Board is convinced that

GST does not form part of the market value, the Complainant did not prove that the assessment is incorrect. The Respondent asked the Board to confirm the 2014 assessment at $20,918,500.

Decision

[46] The Boards confirms the 2014 assessment of $20,918,500.

Reasons for the Decision

[47] The Board is legislated not to change an assessment that is fair and equitable. It is the Board's mandate to determine the correct, fair and equitable value of properties under appeal. The Board finds that the Complainant did not present sufficient evidence to demonstrate that the assessment is incorrect; that GST is not part of market value; or that the Respondent erred in applying a 1.0 BMR.

[48] The Board finds that the Respondent assessed the subject in keeping with the legislative requirements. The Respondent did not err in using Marshall and Swift; by including the GST in the cost calculation as dictated by Marshall and Swift; nor by applying a BRM of 1.0, eliminating the negative adjustment previously used to back out the GST.

[49] The Complainant argued that the Respondent has no authority to assess GST because GST is not included in the definition of property, land, improvement or equipment and machinery. The Board finds that the definition of improvement does not restrict the valuation of improvements so as to exclude GST. The assessment of the improvement is based on the valuation standard of market value meeting the requirements of MRAT s. 2. Like insurance, builder's mark up, and architect fees, GST is a proper component of the valuation of an improvement, when using the cost approach.

[50] The Complainant argued that GST does not add value to an improvement; therefore, it should not be included in the market value of the improvement. The Complainant did not present evidence to show that only costs that add value should be included in calculating replacement cost. The Board notes that Marshall and Swift specifically include sales tax in the calculation of replacement cost. The Board notes that several other components are included in the calculation that may not typically be thought to add value including: supervision, contractor's profit and overhead, architect's plans and specifications and insurance. The Respondent presented authority that both direct and indirect costs must be included in replacement costs and that indirect costs include sales tax. The Board is not persuaded to exclude the GST from the assessment based on the argument that GST does not add value.

[51] The Complainant argued that GST should not be included in the assessment because GST is not a component of market value. The Board finds that the Respondent is required to assess based on market value. Where it is not possible to determine market value with the sales comparison or income approach, the cost of replacement approach is accepted as market value because the replacement cost calculation is the best estimate of the value of the subject. The Complainant does not object to the use of Marshall and Swift to determine replacement cost. The definition of replacement cost in Marshall and Swift includes sales tax. Sales tax includes GST. With these findings, the Board turns to the Complainant's only argument that challenges whether GST is part of market value: the flow through theory.

[52] Without the support of expert evidence, studies or other authority, the Complainant argued that there are two parts to the flow through theory: GST is never actually paid by an

owner, therefore, GST is not a true cost and should not be included in the calculation of the replacement cost of an improvement; and market thinking would dictate that a prudent owner would not buy a property that it knew to include GST, because the price of the improvement would be considered inflated.

[53] The Board finds that the theory that GST always flows through to the end user and that the owner never pays GST, is flawed. In fact, the owner pays the GST but tries to pass it on to customers or to claim tax credits. The Board is persuaded by the Respondent's argument that GST tax credits have time limits and exceptions, not all owners qualify for credits, not all credits are claimed; and an owner might be short of credits.

[54] Even if the majority of owners of cost based properties are entitled to 100% tax credits, the Board is not convinced that this impacts on the value of the improvement. The Board finds that whether a business owner can deduct or apply for credits bears no relationship to the value of the property: assessment is concerned with the market value of the subject, not with the GST tax position of the owner.

[55] The flow through theory raised significant questions for the Board, and the evidence presented did not give the Board a clear explanation as to how the flow through theory actually affected market value.

[56] The Board is also unwilling to deduct the GST from this assessment because it would create an inequity for owners whose property is assessed using the sales comparison or income approaches, neither of which back out GST. The Board foresees that where an owner enjoys both GST credits and a reduction of assessment based on the flow through argument, other taxpayers might perceive this as an inequitable double dip.

[57] The second part of the flow through theory is that if GST is a component of replacement cost, market thinking would dictate that prudent purchasers would see the price of cost based properties as inflated. This is pure conjecture and ignores the fact that cost based properties do occasionally trade on the open market and the price paid is market value. The Board is of the view that market thinking is more likely that an owner will try to recoup any outstanding GST and that a prudent buyer will pay market value. Within those competing goals, some portion of GST finds its way into market value.

[58] Similarly, the Complainant suggested that when determining an assessment, MRAT requires a market focus and so the test should be: what would a prudent buyer pay for the property? The Board disagrees. Applying a test better suited to the sales approach is not practical because there is a lack of sales data to determine what a prudent buyer would pay. Without sufficient sales data, the Complainant cannot prove that on the open market, the subject would sell for less than the replacement cost value inclusive of GST. Further, mixing a direct sales test with a replacement cost assessment is mixing assessment methods and is not accepted assessment practice.

[59] The Board does not accept the Complainant's arguments that GST should be removed by analogy to other assessment regulations or that in the same jurisdiction, regulations governing all assessment schemes, including regulated property, ought to be similarly interpreted and applied for the sake of consistency and fairness. The Board finds that the cost manuals presented by the Complainant are used to assess regulated properties. The Board finds that regulated properties are treated very differently than unregulated properties, as evidenced by their respective regulations. The Board concludes that the legislators did not intend for regulated and

unregulated properties to be treated similarly and the Board has no authority or will, to manipulate what was intended by the legislators. Further, the Board notes that GST is not removed from all aspects of regulated property, just where specifically excluded. If the Complainant's argument was accepted and consistency in all assessment regulations was applied, then GST must be included in the assessment of unregulated property, unless it is specifically excluded.

[60] The Board accepts the Respondent's argument that GST forms part of market value and that GST is a proper component of the replacement cost calculation. The Complainant's evidence and argument on this point failed to persuade the Board that GST does not form part of market value or that GST should be backed out of the subject's assessment.

[61] The Complainant spent much of the hearing explaining that the owner never has to pay GST so the Board was surprised to hear the Complainant argue that it is unfair for the owner to pay a tax on a tax. The Board finds that where GST is included in the replacement cost calculation, the owner is not paying a tax on a tax. The Board finds that the cost approach yields an estimate of the replacement cost of the improvement and this is accepted as market value for assessment purposes. The owner is being taxed on an estimated market value assessment. The Board also notes the Complainant failed to present any evidence of legislation or policy prohibiting tax on a tax. The Board accepts the Respondent's argument that after tax dollars are used to pay for GST and that many goods and services include hidden taxes on which GST is paid.

[62] Upon review of the cases presented by both parties, the Board gives greater weight to the submissions and recent Board decisions presented by the Respondent. The Complainant's cases deal with assessment in other provinces and no evidence was presented to show that these provinces have similar assessment legislation, regulations and municipal policies to those that apply to the subject. The Board noted that many cases consider harmonized tax, but those are not the facts before this Board. The Board concluded that in several instances the Complainant misinterpreted the cases or presented cases where GST was mentioned, but was not at issue. The Board also put little weight on the case law presented by the Respondent as the GST in those cases was not an issue or dealt with residential property.

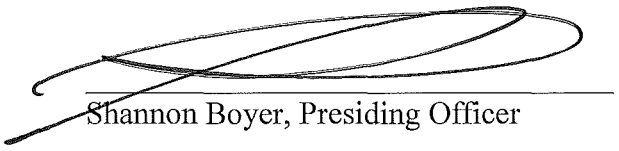
[63] The Board placed most weight on Decisions from the Central Alberta Regional Assessment Review Board 0262-491/2012, Calgary Assessment Review Board 75757P-2014, 75718P-2104 and Edmonton Assessment Review Board 2014-ECARB-00693 and 2014-ECARB-00753 in which those Boards were charged with determining whether GST should be included in the calculation of the replacement cost of improvements. With the exception of 2014-ECARB-00753, the Boards decided not to remove the GST from the assessments under appeal.

[64] The Board finds that the subject property was at typical market value as of July 1, 2013 as assessed in the amount of $20,918,500.

Dissenting Opinion

[65] There was no dissenting opinion.

Heard August 6-7, 2014.
Dated this 5th day of September, 2014, at the City of Edmonton, Alberta.



Shannon Boyer, Presiding Officer

Appearances:

Brett Flesher
for the Complainant

Abdi Abubakar
Cam Ashmore
Doug McLennan
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