Edmonton Composite Assessment Review Board

Citation: Oxford Properties Industrial GP Inc. as represented by Altus Group v The City of Edmonton, 2014 ECARB 01708

Assessment Roll Number:	10177247
Municipal Address:	12850 170 STREET NW
Assessment Year:	2014
Assessment Type:	Annual New
Assessment Amount:	$4,730,000

Between:

Oxford Properties Industrial GP Inc. as represented by Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Robert Mowbrey, Presiding Officer
Joseph Ruggiero, 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.

Preliminary Matters

[2] The Respondent raised three issues under preliminary matters:

a the Respondent is recommending a change in assessment from $4,730,000 to $1,592,500.

b the Respondent raised the issue of the land use code and the mill rate.

c the Respondent raised the issue of the Edmonton Composite Assessment Review Board having the appropriate jurisdiction to regarding the land use code and the mill rate.

A Recommendation of a change of assessment from $4,730,000 to $1,592,500.

The Respondent advised the Board that the revised or amended assessment was based on farm land.

The Complainant advised the Board that the Complainant was in agreement with the recommendation of the Respondent.

B Land use code and mill rate.

The Respondent stated that the land use code and mill rate issues were new and should not be allowed by the Board. The Complainant's disclosure dealt with assessment and not with land use code or mill rate.

The Complainant noted that Council sets the mill rate and that issue cannot be challenged. In addition, the Complainant asks the subject property to be classed as farm land, which it is.

C Jurisdiction of the Board.

The Respondent questioned whether the Board has the jurisdiction to rule on evidence concerning the land use code or mill rate. The Respondent referred the Board to the *MGA s. 460 [1], [5-d], [5-e] and [6].*

460[1] A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

460[5-d, 5-e] A complaint may be about any of the following matters, as shown on an assessment or tax notice:

d an assessment class;

e an assessment sub class;

460[6] There is no right to make a complaint about any tax rate.

The Respondent advised the Board that the Board had no jurisdiction about the tax rate and the land use code was for internal use. In addition, the Respondent stated the Complainant had no right to make a complaint on a tax rate. The Respondent further stated that *MGA 460[5]* does not include land use codes or mill rates.

The Respondent advised the Board that there is a distinction between class [farmland] and land use code. The objection is that the issue was not raised in the disclosure documents.

The Complainant stated The City of Edmonton inadvertently mowed the crop that was growing and then changed the status from farm land to vacant commercial land. The Complainant further stated the assessment class was incorrect and applied incorrectly.

Under questioning, the Respondent acknowledged the withdrawal to correction was not signed. The Respondent further noted that the subject property was farm land, but had 99% commercial and 1% farm land attached to the subject property. Under further questioning, the Complainant was asked what commercial activity was taking place on the subject property and the Respondent advised the Board that the Respondent was not sure.

In addition, the Respondent advised the Board that three acres of the subject property were based on market and the remainder was assessed as farm land.

[3] The Board recessed, deliberated and rendered a decision to the parties. The decision was agreement on the recommended change on the assessment from $4,730,000 to $1,592,500.

[4] Regarding jurisdiction, land use code and the mill rate, the Board decided to continue the hearing and hear the evidence.

[5] The Board acknowledged to the parties that the Board knew that it did not have jurisdiction or the authority to alter the mill rate and the land use code is a City internal document.

[6] The Respondent objected to the Complainant's rebuttal package stating that it does not respond to the City's position and therefore should not be considered rebuttal. The Complainant advised the Board that the information was case law and could be brought forth at any time.

[7] The Board recessed, deliberated and rendered a decision to the parties. The decision of the Board was the information was in fact not rebuttal, but could be raised under argument and summation.

Background

[8] The subject property is farmland subdiv unit; located in the Kinokamau Plains area subdivision. The subject property consists of 388,609 square feet [8.91 acres]. The 2014 assessment is $4,730,000.

Issues

Should the subject property be assessed as farmland as it has been in previous years, and therefore should be valued according to the regulated farm rates?

What is the market value of the subject property?

Position of the Complainant

[9] The Complainant filed this complaint on the basis that the subject property assessment of $4,730,000 was inequitable and in excess of market value due to incorrect classification, incorrect sub-classification, incorrect zoning and failing to account for the 100% farm status of the farmland. In support of this position, the Complainant submitted a 103 page evidence package marked as Exhibit C-1. In addition, the Complainant further submitted a 37 page evidence package marked as Exhibit C-2.

[10] The Complainant advised the Board of the 2013 Alberta Farm Land Assessment Minister's Guidelines and stated the dry arable land and the dry pasture land had a value base rate of $350 per acre. The Complainant notes, that after valuing the first three acres at market, the remainder was valued at $318 per acre.

[11] The Complainant referred the Board to *Matters Relating to Assessment and Taxation Regulation [MRAT]* and the valuation standard for a parcel of land as outlined:

4[1] the valuation standard for a parcel of land is

[a] market value, or

[b] if the parcel of is used for farming operations, agricultural use value.

4[2] in preparing an assessment for a parcel of land based on agricultural use value, the assessor must follow the procedures set out in the Alberta Farm Land Assessment Minister's Guidelines.

4[3] despite subsection [1][b], the valuation standard for the following property is market value:

4[3][d] an area of three acres that

[i] is located within a parcel of land, and

[ii] can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

[12] The Complainant reiterated that there was no commercial activity being performed on the land.

[13] The Complainant referred the Board to a Court of Queen's Bench of Alberta decision [2011 ABQB 592], which highlighted the following:

> Mr. Simpson testified that farmers will often leave land fallow [not harvested], and that leaving land fallow is still consistent with "farming operation."
>
> But in my view, there is insufficient basis in the reasons to ascertain why the CARB reached those conclusions, why it rejected Mr. Simpson's evidence that he could draw conclusions about what happened in 2009 from what he saw in 2010, and what logical route the CARB followed to conclude the definitions in the regulation required that a crop be cut each year.

[14] The Complainant referred the Board to an Edmonton Composite Assessment Review Board decision [roll #9567801] which outline the following:

> The decision of the Board is to return the subject property to farmland status. The original 2010 assessment of $863,000 is confirmed.
>
> In contemplation of the Judge's comment in paragraph 67 of the Memorandum of Decision, the Board examined section 1[i] of MRAT to answer the question "whether the subject property should be assessed as farmland." In the definition that reads, "farming operations" means the raising, production and sale of agricultural products and includes…", there is no compulsory or mandatory direction that all three conditions must be met. The regulation does not impose a mandatory condition that would follow from language such as "in a farming operation, there must be the raising, production and sale of agricultural products to qualify for farm status." If the narrow interpretation of the Respondent was to be accepted, all broken land, hay land used for the feeding of the farmers own cattle, and summer fallow would not qualify for farmland status throughout the

province. In the Board's opinion, this would not be logical, and therefore the Board finds that the subject property would not lose its farmland status simply because it is alleged that no hay crop was taken off it in 2009.

The Board is bound by s. 4[1] of the *Matters Relating to Assessment and Taxation Regulation [MRAT]* that reads "The valuation for a parcel of land is [a] market value, or [b] if the parcel of land is used for farming operations, agricultural use value" and MRAT s.4 [3][d] that addresses the first three acres within a parcel of land in determining the assessed value for the subject property for the 2010 assessment. Since the Complainant did not dispute the market value for the first three acres of the subject property, and acknowledged the regulated farm rate for the remaining acreage, the Board values .....property owner.

[15] During argument and summation, the Complainant advised the Board the subject property had farm status in 2012 and 2013.

[16] The farmer seeded the lands in May 2013. The City of Edmonton inadvertently mowed the crop in August 2013 and the City subsequently removed the farm status in 2014. There was no mention of strong perennial weed presence, which indicates a clean field. The mowers did not know what they were mowing.

[17] The QB decision indicates that farm status should not be removed based on crop removal but should be based on the definition of a farming operation. The farmer planted seeds in good faith and the City mowed the crop which destroyed the crop. The inadvertent mowing of the crop by the City should not remove farm status.

[18] With the Complainant having the last word, the subject property is part of a lease agreement that covers another parcel that has farm status. The Complainant requests 100% farm status for the subject property.

Position of the Respondent

[19] The Respondent defended the 2014 assessment by providing the Board with a 41 page disclosure package marked as Exhibit R-1.

[20] The Respondent provided the Board with photos, map and an ariel photo of the subject property. The Respondent advised the Board that the land was fully serviced, on a major arterial road way and had a corner location.

[21] The Respondent acknowledged to the Board that the assessment on the subject property was assessed as farm land and the subject property had been reduced from $4,730,000 to $1,592,500 for the 2014 taxation year.

[22] The Respondent referred the Board to the *Municipal Government ACT [MGA] s.460[5],* which states: A complaint may be about any of the following matters, as shown on an assessment or tax notice:

5 [d] an assessment classes;

5 [e] an assessment sub-classes;

5 [f] the type of property;

6 There is no right to make a complaint about any tax rate.

[23] During questioning the Respondent advised the Board that the Respondent was not sure of what aspect of the subject property was commercial.

[24] The Board was advised that the first three acres were assessed at market and the remainder was assessed as farmland.

[25] During argument and summation, the Respondent stated there was agreement the subject property was farm land and notes the land use code does not affect the assessment.

[26] The Respondent referred the Board to the MGA s.297, assigning assessment classes to property. 297 [1] when preparing an assessment of property, the assessor must assign on of more of the following assessment classes to the property:

[a] class 1-residential:

[b] class 2-non-residential:

[c] class 3- farm land:

[d] class 4-machinery and equipment.

[2] A council may by bylaw

[a] divide class 1 into sub-classes on any basis it considers appropriate, and

[b] divide class 2 into the following sub-classes:

[i] vacant non-residential;

[ii] improved non-residential,

[27] The Respondent advised the Board that only the taxes were in dispute and the Board had no authority or jurisdiction on this issue.

Decision

[28] The decision of the Board is to accept the recommendation as per agreement of both parties and reduce the 2014 assessment from $4,730,000 to $1,592,500.

[29] Respondent assigned and reclassified the subject property back to farm land as was previously the case.

[30] The decision of the Board is the subject property's first three acres should be valued at market and acknowledges the regulated farm rate [100%] for the remainder of the parcel.

Reasons for the Decision

[31] The Board is fully cognizant the Board has no jurisdiction or authority to change or alter the mill rate or taxes. Having said that, the Board does have jurisdiction to discuss an assessment class and an assessment sub-class.

[32] The subject property was farmed and had farm status in 2012 and 2013. The subject property lands were seeded in May 2013. The City of Edmonton inadvertently mowed the crop in August 2013 and subsequently removed the farm status in 2014. The Board received no evidence from the Respondent that commercial activity was being carried on the subject property. There was no mention that strong perennial weeds were present. There is a strong suggestion that the mowers did not understand what they were moving. Therefore the Board believes the subject property should revert to farm status.

[33] The Board was persuaded by the 2011 ABQB 592, which stressed that farmers will often leave land fallow [not harvested], and that leaving land fallow is still consistent with "farming operations." However, the Board notes the subject lands were seeded in 2013 and the City mowed the crop and effectively destroyed the crop. This act should not negate the fact that the Complainant was in the business of a "farming operation."

[34] The Board was influenced the Edmonton Composite Assessment Review Board decision of January 13th 2012 [roll number 9567801]. The subject property has been and continues to be a farming operation; despite the fact the City destroyed the crop for the current year.

[35] Therefore, the first three acres of the subject land should be assessed at market value.

[36] The Board acknowledges that a 100% regulated farm rate should apply to the remainder of the subject lands. There is no evidence to show or prove that the subject property is anything other than a farm, and such, should be treated as such.

Dissenting Opinion

[37] There is no dissenting opinion.

Heard November 17, 2014.
Dated this 3rd day of December, 2014, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

John Trelford
for the Complainant

Scott Hyde
Steve Lutes
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.

Exhibits

C-1 Complainant's Brief
C-2 Additional Complainant's Brief
R-1 Respondent's Brief