

# Central Alberta

Regional Assessment Review Board

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Decision: **CARB 0262 671/2015**

Complaint ID 671

Roll No. 3212300

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## COMPOSITE ASSESSMENT REVIEW BOARD DECISION

Hearing August 19-21, 2015

PRESIDING OFFICER: J.R. McDonald

BOARD MEMBER: T. Hansen

BOARD MEMBER: A. Knight

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BETWEEN:

TERVITA CORPORATION

Complainant

-and-

CITY OF RED DEER  
Revenue & Assessment Services

Respondent

This is a complaint to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Red Deer as follows:

ROLL NUMBER: 3212300

MUNICIPAL ADDRESS: 8149 Edgar Industrial Ct

ASSESSMENT AMOUNT: \$ 4,148,300

The complaint was heard by the Composite Assessment Review Board on August 19-21, 2015, in the Council Chambers at the City of Red Deer, in the province of Alberta.

Appeared (as Agent) on behalf of the Complainant: Altus Group representatives

Randall Worthington, (August 19-21)

Dave Mewha, (on August 20-21 only)

Appeared on behalf of the Respondent:

Anna Meckling, Property Assessor

Rob Kotchon, Assessment Coordinator and Analyst

### **DECISION:**

The assessed value of the subject property VARIED on the issue of removal of GST from the assessed improvement amount. The new assessed value is \$4,031,290. Reasons are provided within the decision.

## **JURISDICTION**

- [1] The Central Alberta Regional Assessment Review Board [“the Board”] is established in accordance with section 456 of the *Municipal Government Act*, RSA 2000, c M-26 [“MGA”], and City of Red Deer Bylaw No. 3441/2009, *Assessment Review Board Bylaw*.
- [2] The Composite Assessment Review Board (Board) is appointed pursuant to s.452(2) of the MGA.

## **PROPERTY DESCRIPTION AND BACKGROUND**

- [3] Both parties prepared their submissions collectively to be addressed in one hearing for the ten (10) properties under complaint.
- [4] The subject property is a metal yard owned by Tervita Corporation, and operating as HMI Industries. The site totals 4.63 acres and is zoned I1 Industrial Business District. The main building comprises 32,471 sf on the main floor with an office mezzanine of 2,596 sf storage warehouse and site improvements. The assessment for 2015 is land \$1,808,000 and Improvements \$2,340,300.
- [5] The 2015 assessment of the subject property describes it as non-residential property including land and improvements with warehouse.

## **PRELIMINARY MATTERS**

- [6] The Board Chair confirmed that no Board Member raised any conflicts of interest with regard to matters before them.
- [7] Neither party raised any objection to the panel hearing the complaint.
- [8] Both the Respondent and Complainant requested separate decisions for each of the ten (10) individual properties under complaint, even though they are to be heard collectively, during this hearing.
- [9] The Respondent further raised issue with some of the content contained within the Complainants rebuttal submission noted in evidence as C.3:
  - Page 5 of 105, at bullet # 3, it appears that the Complainant indicates that there is additional information submitted
  - Mentioned that many sections of the Rebuttal C.3 were restating what was submitted in original submission by the Complainant
  - Objected to page 7 of Rebuttal C.3 that is new information which was a print out of Wikipedia definition of Goods and Services Tax (Canada)
  - Objected to page 11 of Rebuttal C.3 that is new information which is a copy of subject email “2015 Assessment complaint information – 3010 50 Ave” from Complainant to

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Altus agent for Complainant dated August 9, 2015 related to Input Tax Credits applied by property owner.

- Objected to page 13 and 14 of Rebuttal C.3 that appears to be new information, which is a copy of a chart of Village Mall Roll 2040065. It notes at the bottom of page 14 that “Also see examples in respondent brief pages 156-234”.

[10] The Complainant noted a concern about the Respondents objections stating that today is the first time they heard that the Respondent had concerns or objections with the Complainants rebuttal.

[11] The Board recessed to consider the Preliminary Matters.

### **DECISION ON PRELIMINARY MATTERS**

[12] The Board will provide a written decision for each of the nine properties properly submitted and heard by the Board at this hearing.

[13] With respect to point 3 on page 5 of C.3 Rebuttal wherein the Claimant indicates that additional information is provided. The Board found this statement vague and was not prepared to comment, except to state that the Board will not hear any new evidence.

[14] With respect to the Respondents concern about information provided in the Complainants rebuttal indicating that much of the information is a repeat of information already provided, the Board found no issue with that information being a part of rebuttal.

[15] With respect to the evidence provided by the Complainant in Rebuttal C.3 pages 7 and 11, the Board will allow it to stand as these pages of information appear generic to the Complainants position and the Board does not consider it to be new evidence.

[16] With respect to the evidence provided by the Complainant in Rebuttal C.3 pages 13 and 14, the Board will allow this information to remain until the Complainant presented during rebuttal at which time the Board will determine if it is relevant and/or admissible.

### **BOARD REASONS FOR DECISIONS ON PERLIMINARY MATTERS**

[17] The intention of the Board will be to ensure a thorough examination of each property under appeal and the Board will provide a decision on each property before it.

[18] Repeated information provided in rebuttal evidence is not in the opinion of the Board new evidence and will stand.

[19] Pages 7 and 11 of the Complainants Rebuttal submission C.3 will be allowed as the Board is of the opinion that the information provided is generic support for information already in evidence and not considered new stand-alone evidence.

[20] The Board was advised by Mr. Randal Worthington (agent) that the Complainant's representative, Mr. Dave Mewha (agent) who was not present at this time was the author of a portion of the rebuttal including pages 13 & 14, and he would not be available until later in this hearing at which time he could address pages 13 and 14.

Page 14 of 105 in C.3 states; *"Also see examples in respondent brief pages 156-234."*

- a) The Board was unclear as to the purpose of the evidence on page 13 and 14 and unable to determine if it was in fact new or part of existing evidence, therefore the Board deferred a decision and allowed it to stand until the Complainant refers to the information at rebuttal testimony.
- b) At the time, the Board will either, not allow it, or accept it and give it the weight that the Board determines is appropriate.

### **EXHIBITS SUBMITTED**

[21] The Board confirmed the submissions of the parties and entered the following Exhibits into the record as they were produced within the hearing:

- A.1 Hearing Materials including Complaint and Forms, property assessment, and Clerk letter indicating confirmation of receipt of complaint / notice of hearing details (82 pages)
- C.1 Complainant disclosure submission (bound booklet with 360 pages)
- C.1(a) Part 2, Addendum to C.1 (un-numbered, excerpts from legislation and guides relating to Machinery & Equipment, Chattels)
- C.2 Complainant disclosure submission (large binder, tabbed and numbered sections)
- C.2(a) Summary of GST argument (first 20 pages in C.2)
- C.3 Complainant rebuttal submission (105 pages)
- R.1 Respondent summary submission (74 pages)
- R.2 Respondent "Book of Evidence" part 1 of 3
- R.3 Respondent "Book of Evidence" part 2 of 3
- R.4 Respondent "Book of Evidence" part 3 of 3
- R.5(a) Respondent case #1 submitted during preliminary matters
- R.5(b) Respondent case #2 submitted during preliminary matters

### **ISSUES OF APPEAL**

#### **Complainant Issues**

[22] The assessment of the property is not fair and equitable considering the assessed value and assessment classification of comparable properties.

[23] The aggregate assessment per square foot applied to the subject property is inequitable with the assessments of other similar and competing properties.

[24] Due to the characteristics and physical condition of the subject property, the cost approach provides a more reliable estimate of market value for assessment purposes.

[25] There are errors in the Marshall and Swift costing estimates. The cost calculation has included Goods and Services Tax ["GST"] that should not be included in the assessment.

### **Issues for Board Consideration**

[26] The Board is required to assess the party's positions to determine if the municipal assessment is fair and equitable and is properly calculated. In consideration of the complainants issues, the Board identified that following are the primary questions to be addressed within this decision:

1. Should the GST be included or removed from the Cost Approach calculations for property tax assessment?

The other matters listed by the Complainant are either sub-issues or standard aspects of a Board decision, and therefore the Board will address these sub-issues within the findings and decision respecting the primary issues.

### **POSITION OF THE PARTIES**

#### **ISSUE GST – Position and Evidence of the Complainant**

[27] The Complainant states that the ["GST"] should be excluded from the valuation of commercial properties as (page 1 of 20 in C.2(a)) :

- *"It is not an actual cost in the construction of acquisition of commercial property,*
- *It is not property as defined by the Municipal Government Act,*
- *It amounts to double taxation, and,*
- *Its removal is expressly mandated by the M & S cost calculator used in deriving the assessment."*

[28] The Complainant provided an explanation, overview and history of the GST from mapleleafweb.com and from Government of Canada, Canada Revenue Agency ["CRA"] web site (page 2 of 20 in C.2(a)).

[29] The Complainant noted that the purchaser pays the GST, and the vendor is responsible for remitting the GST to the government. On page 2 of 20 in C.2(a) the Complainant notes that "in the context of commercial property, businesses receive tax credits for GST paid on construction, leases, and purchases of property used in the course of or in connection with their business.

[30] Input Tax Credits ["ITC"s] are explained in the CRA guide RC-4022 noting that a commercial activity must be registered under S. 240(1) of the *Excise Tax Act (ETA)* Canada. When registered for GST a commercial venture may claim a GST refund through ITC's (page 3 of 20 C.2(a)).

[31] The Complainant cited *CARB 73977-2014*, Oct. 7, 2014: *Big Rock Brewery Operations Corp. v City of Calgary (Big Rock)*, stating that the tax payer appealing in this case is ITC eligible as a commercial operation, does in fact apply for ITC, and is therefore aware of the laws and refund opportunities when paying GST (page 4 of 20 C.2(a)).

[32] The Complainant further submitted a New Brunswick Court of Appeal decision (on page 7 of 20 in C.2(a)), *New Brunswick (Executive Director of Assessment) v. Food City Ltd.* [2005] NBCA 65 (“*Food City*”).

*“The Board resolved as follows; “[11] At all material times, Food City was an HST (GST) registrant and would have been entitled to a full ITC. ... [12] the Board described that the sole issue before it was whether the HST (GST) ... was to be included in the quantification of the building’s replacement cost. The Board resolved that the issue in Food City favour and allowed its appeal... . Therefore in the opinion of the Board the HST (GST) should not be included in the cost to replace the building in question.”*

*The NBCA further expanded ...*

*“[44] Critically, the real and true cost is not specific to Food City; it is precisely the cost that any HST (GST) registrant would have incurred to erect a building in replacement of the subject structure on each of the relevant assessment dates. ... does not include HST (GST).”*

[33] The Complainant cited *ABQB Tolko Industries Ltd. v. Big Lakes (Municipal District)* [1998] A.J. No. 161 1998 ABQB 51 – paragraph 46 (page 9 of 20 in C.2(a)).

*“... During the plant construction GST was paid, then refunded and therefore non-assessable.”*

[34] The Complainant cited *Wedley v British Columbia (Assessor of Area No. 8 – North Shore/Squamish Valley)* [2000] BCSC 1365, where Justice Lowry confirms at paragraph [26] that GST is not included in Real Property valuation as it is not proper appraisal practice (page 9 of 20 C.2(a)):

*“[26] ... is it proper practice to include ... GST on the purchase of newly constructed property? The Board determined that, on the evidence before it, the answer was No.*

Justice Lowry further clarifies that:

*“[28] There can be no doubt on a reading of the decision that the Board determined the amount of GST paid was not to be included. It then went on to determine what, in the results the assessments should be.”*

[35] The Complainant cited Manitoba case law (page 9 of 20 C.2(a)), where the *Board of Manitoba* noted, in *Order No. A-05-236* [2005], the following:

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

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- [36] The complainant further notes (page 9 of 20 C.2(a)) that “Manitoba creates its own cost manual, but maintains that it excludes GST from its cost estimates that are used for assessment purposes.”
- [37] The Complainant notes that it is widely held that Marshall and Swift, LLC (2013) [“M & S”] “Marshall Valuations Service” provides cost data for replacement costs of buildings and other improvements used in all 50 USA states, Puerto Rico, Guam and Canada. M & S includes multipliers to convert costs to specific localities. This converts to Canadian dollars and includes GST with a provision for adjustment for GST/HST (Harmonized Sales Tax) by province.
- [38] The Complainant noted that the City of Calgary adjusts downward to account for GST.
- [39] The Complainant referred to page 26 of R.2 wherein the Respondent submits:  
*“70. The Assessor has included numerous comparable assessments from the City of Red Deer which have all been assessed, some in part, using the Marshall and Swift in a similar manner as the subject properties (Book of Evidence page 155 [R-3]. Many of the comparable assessments include Marshall & Swift calculations with no adjustment by the City for GST; all have been accepted as correct and are not under complaint for the current assessment year.”*
- [40] The Complainant stated that the Respondents opinion that assessments are accepted with the GST is an assumption on the Respondents part and is, in the Complainants opinion, not entirely true. The Complainant further contended that the cost of an assessment appeal for the GST alone might exceed the value of return. The Complainant stated that most taxpayers have not appealed on the grounds of cost to appeal, not that they have “accepted” the assessment with GST. The Complainant asserted that many have not accepted the GST on their assessments as they have only decided not to appeal due to cost.
- [41] The Complainant referred to M & S manual section 99 page 5 (page 7 of 251 in C.2), which states;  
*“Canadian Tax Removal – the following percentage deductions need to be applied to Canadian local multipliers to remove all GST... Alberta – 5%.”*
- [42] Alberta Construction Cost Reporting Guide [“CCRG”] 2005 established pursuant to the MGA s. 322.1(1) (a) (iii) provides information and direction to assessors. These are consistent with Matters Relating to Assessment and Taxation Alberta Regulation 220/2004 [“MRAT”]. CCRG is used by assessors to determine construction cost for property not included in Schedule A, including Machinery and Equipment Assessment. GST is listed as property that cannot be assessed.
- *“2.300 Property that cannot be assessed  
The cost of “property”, “improvements”, “Structures”, or “machinery and equipment” that do not meet the legislated definitions’ are excluded.”*
  - *“2.300.600 Goods and Services Tax (GST)  
The GST paid on construction materials and services is excluded.”*

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- [43] The Complainant submitted that a number of Municipalities do not include the GST, which the Complainant believes, is instructive for the Board.
- [44] The Complainant argues that including the GST would amount to double taxation; applying the mill rate to an assessment that includes GST amounts to taxing a tax.
- [45] The Complainant submits that the current M & S cost approach is the only method of assessment that includes GST noting that the income approach and the sales comparison approach do not include the GST. The Complainant submits that this double standard is unfair.
- [46] The Complainant submits in *Mountain View County v. Alberta (Municipal Government Board)*, 2000 ABQB 594, (pages 284 to 292 of C.2) Justice Fraser States:  
*"[21] The principles which underlie the assessment process dictated by the Act are threefold. They requires the assessments of property to be based on market value, that they not be in excess of that which is fair and equitable having regard to assessments of similar property in the same municipality and that they be prepared using mass appraisal. ... The answer should not be to maintain (in conflict with the Regulation) the assessment at a level higher than market value.*  
*[22] I find support ... in Bramalea Ltd. v. British Columbia (Assessor of Area #09-Vancouver), (1990) 76 D.L.R. (4<sup>th</sup>) 53:*  
*It is my view that the principles mentioned give taxpayer two distinct rights:*  
*(i) a right to an assessment which is not in excess of that which can be regarded as equitable; and*  
*(ii) a right not to be assessed in excess of actual value. It follows that it is not proper for the Board to sustain an assessment in excess of actual value simply because it bears a fair and just relation to assessments on the other similar properties. Where the Board is of the view that the assessed value of property under appeal is too high, and cannot reasonably be regarded as at "actual value", then it ought to reduce the assessment even though it cannot reduce the assessments on the other similar properties, which are not subject of appeal. In this way the Board will have done what it can, in light of its limited power; it will have enforced the rights of the taxpayer before it.*
- [47] The Complainant stated that the omission of the GST adjustment is not an opinion of value; rather, it is an error in the calculation of the reconstruction costs of the property. Thus, the Complainant submitted that the GST should not be included in an assessed value of costs, and therefore requests the Board to reduce the amount of GST associated with the M & S multiplier for Alberta, which is 5%.
- [48] The Complainant submits that they have met the burden of proof for the issue on GST as it relates to this complaint before the Board and believe it is now up to the Respondent to refute their evidence.



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**ISSUE - GST - Position and evidence of the Respondent**

- [49] The Respondent submits that it has provided evidence to support its position that the Complainants grounds for complaint have no merit (pages 2 and 3 of R.1).
- [50] The Respondent is not disputing whether GST is included or not but rather is stating that it is included in the base rates for Canada. Referring to R.1, page 23 (point # 57), the Respondent states:
- “57. With respect to GST, the very fact that GST is included in all base rates for Canada verifies that it is a recognized and accepted factor in the replacement cost new of all buildings covered in the M & S manual for Canada. If GST was required to be removed in every circumstance, it would not have been included in the base rate to start with. If Canadian costs on average were representative of actual costs without the inclusion of GST, the base rate would not include it.”*
- [51] The Respondent submitted that the assertion by the Complainant that the Assessor should exclude GST from the assessment is erroneous, as it is the Respondent’s position that the Assessor has correctly utilized the cost approach to value by their use and reference to M & S.
- [52] The Respondent explained that the Assessor uses the “cost services” method of calculating replacement cost new of improvements to estimate building construction costs (page 18 of R.2 # 39 & 40).
- [53] The Respondent further explained [41] that the City of Red Deer uses a Computer Aided Mass Appraisal [“CAMA”] system through a service provider, Compass Municipal Services Inc. called [“CAMAlot”]. This system integrates with a version of the M & S Commercial Estimator (page 18 of R.1).
- [54] The Respondent also explained that improvements are assessed using M & S, which calculates the replacement cost for the subject improvements. Depreciation is applied to the replacement cost new of each improvement based on the age and remaining economic life of the improvement.
- [55] The Respondent provided a listing from M & S Manual (page 251 of R.4 Book of Evidence) of what costs are contained, and what are not contained, in the M& S calculations.
- [56] The Respondent provided a listing of steps in the M & S Calculator method (page 20 of R.1, point # 46).
- [57] The Respondent noted in R.1, on pages 20 and 21 (point #48), that tax is an indirect cost in the M & S Calculator.

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- [58] The Respondent reviewed the process of determining cost including occupancy, types of classes, quality, quantity, and depreciation. The M & S manual (section 1 page 2) offers the Assessor an opportunity to use guided judgement and logical reasoning.
- [59] The Respondent states that the questions the Assessor must ask with respect to the estimate of the value derived from M & S are this: “Does the cost calculation derived through the M & S truly represent the actual cost to replace the improvement? What would the present owner have to pay to have a replacement facility ...” (page 23 of R.2, point # 58).
- [60] As evidence that the Assessor has met the test of an appropriate calculated replacement cost, the Respondent provided a comparison of the assessed value, and the owners cost breakdown.
- \$8.7 million v. \$8.8 Million, for property ID 673, Property Roll 920090 – 310 50 Ave (MGM Ford Lincoln) shown on page 104 of R.1; and
  - further supporting examples are provided on page 278 of R.4.
- [61] The Respondent provided *CARB Decision No. 0262 544/2013 Fining International Inc.*, and *CARB No. 0262-491/2013 MacBain Properties Ltd. (Sanjel)* to demonstrate that GST has historically been included in its cost calculations and the Boards confirmation of same in Red Deer’s market (page 29 of R.1, point #79).
- [62] In reference to the Complainants position, that GST should be removed from the M & S calculations, the Respondent submitted that M & S does not expressly mandate any adjustment to cost calculations due to GST when the costs are derived using excerpts from the M & S manual (pages 260 to 270), and correspondence from M & S support (page 30 of R.2, point #84).
- [63] The Respondent does not support the Complainants opinion that GST must be removed from cost calculations because the 2005 CCRG excludes it (page 30 of R.1, point #86). The Assessor found that this conclusion had no bearing on the market value estimates of the property as the CCRG applies only to regulated property. The Respondent provided *CARB Decision No. 0302-10/2014* (page 30 of R.1 point #87) in which the CARB stated:  
*“While the CCRG and its Interpretive Guide specifically exclude GST from costs calculations for regulated property, no such specific exclusion is provided for in the regulations that apply to the assessment of properties based on market value. If there is an inequity between how regulated and non-regulated property is assessed, it is the legislature that has decided that there be in inequity. This board is not prepared to question the wisdom or the reasons of the legislature in this regard.”*
- [64] Additional supporting evidence that GST is included, despite the arguments of the Complainant that GST should be excluded, were provided by the Respondent starting on page 336 of R.4. They include; *SDLP Snowcat Limited Decision No. 2014 ECARB 01456*,

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504148 Alberta Ltd. CARB Decision No. 74064 P-2014, and 1542921 Alberta Ltd. CARB 75721P-2014.

- [65] The Respondent provided that, contrary to the Complainants assertions; it is a City of Red Deer opinion that there is no express direction to the Assessor to remove GST from non-regulated assessments of improvements. It is the position of the Respondent that neither M & S or the 2005 CCRG are relevant to value estimates for non-regulated improvements.
- [66] The Respondent provided the following in support of its view that the Assessor is not directed by M & S or 2005 CCRG to remove GST from non-regulated properties:  
*RROX Aggregates Ltd. CARB Decision No. 0302-11/2014*  
(page 321, R.4 Book of Evidence)  
*"[63]... ,the Board agrees with the Respondent that it is the legislature that decides how different properties should be assessed. In the case of non-regulated property, the Legislature has determined that such properties must be assessed based on market value. In the case of regulated property, the Legislature has decided that it is to be assessed based on a different standard. ... If there is an inequity between how regulated and non-regulated property is assessed, it is the Legislature that has decided that there is to be an inequity. ...."*
- [67] The Respondent submitted that they believe their evidence supports the methodology used to develop Red Deer assessments and that assessments including GST do in fact establish a fair and equitable market value, which is inclusive of GST, within the Municipality.

### **BOARD FINDINGS and DECISION**

- [68] The Board noted that during the rebuttal (outlined in Exhibit C.3), the Complainant did not reference the evidence on pages 7, 11, 13 & 14 and the Board therefore has given it no weight.
- [69] The Board finds that the onus for the Complainant to convince the Board has been met on the issue that there is an error in the assessment when the Cost Approach to valuation includes GST; the Board finds that the Complainant has established what the assessment value should be minus the GST.
- [70] The Board finds that the GST is not an actual cost in the construction and acquisition of commercial property, and is not property as defined by the MGA s.284(j); s.297(4)(b).
- [71] Upon review of cases in evidence, the Board takes guidance from: *Mountain View County v. Alberta Municipal Government Board*, 2000 ABQB 59 and *Bramalea Ltd. v. British Columbia (Assessor for Area #09-Vancouver)*, (1990) 76 D.L.R. (4<sup>th</sup>) 53, CARB 73977P-2014, Oct.7, 2014. From these case reviews the Board finds compelling evidence supporting the Complainants assertion that GST is to be excluded when establishing replacement value for a non-residential improvement of property that is eligible for ITC.

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- [72] The Board finds that the Respondent's reference cases were unclear as to the reasons for not removing the GST:
- In *CARB Decision No. 0262 554/2013 Finning International Inc. v. City of Red Deer* (page 26 of 30),  
*"[166] The Respondent testified that their MVS calculations did not deduct or remove the 5% GST which is included in the manual rates and is consistent with all MVS manual calculations in Red Deer. ... Based on the above evidence the Board is not persuaded that GST of 5% should be removed from the MVS manual RCN calculations. Neither party provided sufficient information and explanation to show how GST is applied to construction costs and to show the net result after the input tax credits are applied."*
  - In *CARB Decision No. 0262 491/2012 McBain Properties Ltd. v. City of Red Deer* (page 6 of 7)  
*"[31] In the absence of evidence and supporting argument to the contrary, the Board in not persuaded to exclude an amount for GST as assert by the Complainant."*
- [73] It appears to the Board that in both the *Finning* and *McBain* hearings, the Boards had insufficient evidence to make a decision regarding removal of the GST. The Board finds that this is not the case with respect to this hearing, as it appears to the Board that the Complainant has provided significant and compelling evidence in support of its view that the GST should be removed.
- [74] In *CARB Decision No. 0302-11/2014 RROX Aggregates Ltd. v. Strathcona County*, the Board references *"... While the CCRG and its Interpretive Guide exclude GST from costs calculations for regulated property, no such specific exclusion is provided for in the regulations that apply to the assessment of properties based on market value. If there is an inequity between how regulated and non-regulated property is assessed, it is the legislature that has decided that there is an inequity. This Board is not prepared to question the wisdom or reasons of the legislature in this regard."*
- [75] While the Board is not bound by a CARB decision, the Board understands that in the RROX hearing the CARB is making its findings based upon the evidence submitted during the hearing. It is the Board's view that the RROX evidence and submissions are different, than the evidence presented by the Complainant, to the extent that the Board did not give the RROX decision significant weight.
- [76] In *ECARB 01456 Decision SDLP Snowcat Limited v. Edmonton (City)*, the Board heard an appeal regarding the inclusion vs. the removal of GST. The Board found on page 15:  
*"[97] With respect to onus, the Board is not persuaded by the Complainant's argument that the treatment of GST within the market lies particularly within the knowledge of the Respondent, thereby shifting the onus to the Respondent to prove that GST does form part of market value. This contradicts the Complainant's main argument, The Complainant urges the Board to accept as fact that the exclusion of GST in the market is self-evident and a matter of common sense to all the sophisticated, willing buyers and sellers of commercial properties. The Board is of the opinion that the Complainant must establish a prima facie case that the assessment is incorrect, before the onus shifts to the Respondent to show that the assessment is correct."*

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*“[99] ... There was no evidence, other than the Complainants opinion, to suggest the market for commercial properties is necessarily comprised of participants with special knowledge or abilities, or that these market participants will always be GST registrants who are sufficiently sophisticated to always recoup the GST on a transaction.”*

*“[100] As well, the Board is satisfied that none of the other arguments present by the complainant are bolstered with enough evidence to show that the assessment is incorrect and that GST is not part of market value.”*

- [77] Upon the Boards review of the SDLP *Snowcat* Limited decision, the Board found that the CARB based its decision on the factors presented during the hearing and in evidence, as the evidence related to market value was defined as ‘what a willing seller and willing buyer are prepared to sell and by for’, as legislated. Again, the Board finds that the evidence appears to be different from the evidence and submissions of the Complainant in this hearing and as a result the Board gave *Snowcat* limited weighting towards this decision.
- [78] Further, the Board finds that reference to CCRG and its Interpretive Guide are not relevant to non-regulated property valuation for assessment, and therefore gives such reference little weight in respect to GST.
- [79] The Respondent suggests that because the GST is included in other properties within the municipality using the Cost Approach to valuation, and those taxpayers have not appealed the assessments because of GST, that it is evidence that the assessments are accepted and therefore fair and equitable. The Board finds that it agrees with the Complainant who has argued that the Respondent has not provided any proof that other taxpayers have accepted the GST just because they have not appealed. The Board accepts the Complainants submission that the cost of appeal may in many cases be more than the resulting benefit of appeal.
- [80] In *Tolko Industries Ltd. v. Big Lakes (Municipal District)*, the Appeal of the decision of the Assessment Review Board 1996, MGB 110/97 (page 25 of 156, #46 of C.2), the Board finds:  
*“... the end user of these goods and services has an unconditional entitlement to the return of the GST.”*
- [81] The Board finds that in the *Tolko* decision, the question is whether the Commercial taxpayer is eligible for ITC or not. The Board finds that whether or not a non-residential taxpayer applies an ITC or not is not the question relevant to the matter of GST before it. The Board finds that the primary question is whether or not the calculation of the improvement in the Cost Approach to Value should include GST
- [82] In *Assessor of Area #08 v. Wedley 2000 BCSC, Vancouver*,  
Hon. Justice Lowry stated on page 16 (page 50 of 156, C.2)  
*“I disagree. There can be no doubt on a reading of the decision that the Board concluded the amount of GST paid was not to be included”.*

The Board finds that on evidence, the GST should not be included in the assessment of non-residential property when the assessment is calculated following the Cost Approach to Value.

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- [83] The Board reviewed the *MGA* s.284(1)(j) in relation to the definition of improvement etc. and finds that the Respondent, in assessing non-residential property, distinguishes between structure and M & E by applying GST to the structure but not to M & E. The Board finds this inconsistent in its GST application.
- [84] The Board finds that while M & S includes GST and then offers a multiplier to remove GST, M & S does not require that GST be included in an assessment using the Cost Approach to Value.
- [85] The Board finds that the inclusion of GST is an error because it is not property as defined in the *MGA* and therefore agrees with the Complainant that GST should be removed from the calculation of the improvement in the Cost Approach to Value.

### **DECISION SUMMARY**

- [86] The Board finds that the Respondents value of the subject property is VARIED on the issue of removing the GST from the assessed improvement amount.

The new assessed value is \$4,031,290.

[Land \$1,808,000 plus improvements \$2,223,285 (\$2,340,300 less GST) = \$4,031,285 – rounded to (.....,290)].

- [87] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 21st day of September, 2015 and signed by the Presiding Officer on behalf of all the panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



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J. R. McDonald  
Presiding Officer

**This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the Municipal Government *MGA* which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca).**

**APPENDIX "A"**

Documents Presented at the Hearing  
and considered by the Board

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<u>NO.</u>	<u>ITEM</u>
A.1	Hearing Materials including Complaint and Forms, property assessment, and Clerk letter indicating confirmation of receipt of complaint / notice of hearing details (82 pages)
C.1	Complainant disclosure submission (bound booklet with 360 pages)
C.1(a)	Part 2, Addendum to C.1 (un-numbered, excerpts from legislation and guides relating to Machinery & Equipment, Chattels)
C.2	Complainant disclosure submission (large binder, tabbed and numbered sections)
C.2(a)	Summary of GST argument (first 20 pages in C.2)
C.3	Complainant rebuttal submission (105 pages) Additional submission: Case law submitted by Respondent in summary (citation: <i>1544560 Alberta Ltd v Edmonton (City)</i> , 2015 ABQB 520)
R.1	Respondent summary submission (74 pages)
R.2	Respondent "Book of Evidence" part 1 of 3
R.3	Respondent "Book of Evidence" part 2 of 3
R.4	Respondent "Book of Evidence" part 3 of 3
R.5(a)	Respondent case #1 submitted during preliminary matters
R.5(b)	Respondent case #2 submitted during preliminary matters