

**Cold Lake Composite Assessment Review Board**

**Citation: Lake City Motor Products Ltd. v The City of Cold Lake**

**Assessment Roll Number: 4000017062**  
**Municipal Address: 5305 – 50 Avenue**  
**Assessment Year: 2019**  
**Assessment Type: Annual New**  
**Assessment Amount: \$1,327,200**

Between:

**Lake City Motor Products Ltd.**

Complainant

And

**The City of Cold Lake , Assessment and Taxation Department**

Respondent

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**DECISION OF**

**Jasbeer Singh, Presiding Officer**

**Bob Buckle, Public Member**

**, Public Member**

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### **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.

[2] The Presiding Officer informed the parties at the hearing that the panel for the day's hearing comprised of two members which, according to *Section 458(2) of the Municipal Government Act RSA 2000*, met the quorum requirements.

### **Preliminary Matters**

[3] At the outset, the Board was informed that the Complainant's disclosure documents were received late; after the date indicated on the Notice of Hearing sent by the administration in accordance with *Section 8(2) of Matters Relating to Assessment Complaints (MRAC)*.

[4] The Complainant stated that most of the disclosure evidence had been included in an email sent to the assessor on April 08, 2019 and the Complainant erred in not submitting the additional hard copies of the same evidence to the City; owing to ignorance of the correct procedures.

[5] When asked by the Presiding Officer, the Respondent agreed to the Complainant's disclosure documents, the hard copies of which were received late by the City as well as by the Board; being admitted at the hearing.

[6] Noting the parties' agreement and in the interest of fairness and natural justice the Board deliberated and decided to abridge the time for filing of the Complainant's disclosure to the date of hearing; *as permitted by the provisions of Section 23(1) of MRAC*. The Board is satisfied that the Respondent did not suffer any prejudice, since it received the disclosure electronically.

### **Background**

[7] The subject property – known as 'Lake City Motors', is presently vacant. The subject development includes a 11,414 square foot (sf) automotive dealership building on a 0.86 acre parcel of land at 5305 – 50 Avenue in the City of Cold Lake.

[8] Originally built in 1965 with additions in 1975 and in 1985; the property is situated at a prime location on an RMX (Residential Mixed Use) zoned corner lot along Highway 28 and 50<sup>th</sup> Avenue. The subject property has been assessed using Market Modified Cost Approach based on the Marshall & Swift calculation model. The 2019 assessment has been set at \$1,327,200.

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**Issues**

- [9] The issue before the Board may be viewed in two parts
- a. Does the subject assessment correctly reflect the market value of the property on the valuation date of July 01, 2018?
  - b. Is the physical condition of the property on December 31, 2018, correctly reflected in the subject assessment?

**Summary of the Complainant's Position**

- [10] The Complainant provided the following information and evidence in support of the contention that the subject assessment was excessive and not reflective of the market value.
- a. The real estate market in Cold Lake has been very soft and many properties, including the subject, have been on the market for three or more years. No commercial listing has sold in Cold Lake in the last 24 months.
  - b. The subject has been listed on the market for \$1,900,000; in the hope of getting a decent offer. The owners received an offer for \$1,400,000 in June 2018. This was subject to environmental evaluation; which revealed the nature and extent of contamination in the building. Consequently, the intending buyer reduced the offer to \$575,000; in view of the cost of remediation.
  - c. The owners have received a fresh offer for the subject and two other neighboring properties – owned by the same vendor; for a total value of \$1,200,000.
  - d. Considering the value of the uncontaminated adjacent properties, the buyer's offer for the subject property is only \$450,000.
- [11] In response to questions at the hearing, the Complainant confirmed the following:
- a. The owners of the property were unaware of the contamination until the results from an environmental evaluation; undertaken to meet the buyer requirements; came back in July 2018.
  - b. The environmental concerns were confirmed after further tests in October 2018.
  - c. The first communication to the City, concerning the state of contamination in the building, was in April 2019.
  - d. The Land was found to be free of any contamination.

- e. Various parts of the building have been found to be contaminated primarily with asbestos and lead paint.
- f. The cost of remediation has been estimated to be \$823,521.

[12] The Complainant provided extensive documentation from several sources to highlight the nature of contamination in the building and the cost of remediation.

[13] The Complainant concluded by requesting the Board to reduce the current year assessment to \$600,000; in view of the nature and extent of contamination and the cost of remediation.

### **Summary of the Respondent's Position**

[14] The Respondent broke down the current year assessment as follows:

Land	\$ 583,500
Dealership (Building)	<u>\$ 743,700</u>
Total Assessment Value	\$1,327,200

[15] The Respondent provided details of Marshall & Swift valuation of the subject improvements and stated that the land had been assessed on its market value.

[16] The evidence of contamination was included with the original complaint; filed on May 13, 2019.

[17] The first knowledge of any contamination at this site was given during discussions with the owner in May 2019 and the following documentation was shared with the City

- Phase 1 ESA Final Report dated July 2018.
- ACM Test Results dated October 2018.
- Winmar Preliminary Report dated October 2018.
- Abatement report and estimate of costs for full demolition, dated October 2018.

[18] The Respondent further submitted:

- a. No indication was provided whether the proposed remediation measures, including the likely demolition of the building were proceeding to implementation.
- b. The subject property is listed for sale for \$1,900,000 on the open market and there is no mention of any contamination in the property description.

[19] The Respondent stated that as there are no confirmed plans to demolish the building; the costs provided to the assessment department of the City are irrelevant at this stage.

[20] The Respondent stated that typical adjustments for contamination would be made when proof of costs (environmental contamination studies / abatement reports outlining cleanup costs) and the indication that cleanup is necessary; are submitted to the City.

[21] The Respondent argued that the Complainant has stressed only the contamination issue; which was unknown to the Complainant or to the City, on the valuation date of July 01, 2018. There being no evidence to question the correctness of the subject assessment; the Respondent requested the Board to confirm the assessment at \$1,327,200.

### **Decision**

[22] The Board reduces the assessment to \$1,178,400.

### **Reasons for the Decision**

[23] The Board accepts the Respondent's obligation to establish assessment values that are reflective of the market values on the valuation date of July 01, 2018.

[24] The Board accepts that as of the valuation date (July 01, 2018) or the condition date (December 31, 2018), the assessor was unaware of any contamination issues and hence, the subject assessment was correctly prepared to reflect the condition of the property as the assessor understood it. However, the legislation requires assessments to reflect physical condition on Dec 31, and the Board is bound to apply this requirement based on the evidence now before it.

- [25] The Board notes the Complainant's concerns with the subject assessment as follows.
- a. The subject has been vacant for the past four years.
  - b. While the land has been found to be free of contamination; parts of the building are contaminated with asbestos and lead.
  - c. Although no remediation measures have been implemented; the costs of remediation, which may involve demolition of the entire building, could be in the order of \$823,000.
  - d. The estimated costs of remediation have negatively impacted the market value of the subject property.

[26] The Board notes the legislative requirements that the assessment values need to reflect the physical condition of the property on December 31, 2018. The Board notes that:

- a. Although there was no evidence of remediation order or other environmental protection order; there is evidence of contamination in the building which has not been challenged by the Respondent.
- b. The nature of contamination by way of contaminated loose fill in the cinder blocks suggests that the asbestos contamination may be inherent in the construction practices used at the time of initial build in 1965.
- c. The Respondent has provided the Board with case law (Baron Vs COE – 2019 ABQB 63); pertaining to a contamination issue, which was deemed relevant to the valuation of the subject property.

[27] The Board accepts the Complainant's evidence that the subject building was known to be contaminated on the condition date of December 31, 2018. However, the Complainant is not under any statutory obligation to remediate the situation; as no orders for remediation or demolition were referenced or placed before the Board.

[28] The Board accepts the Complainant's evidence and argument that the discovery of contamination in the building had negative impact on the property's market value.

[29] The Board found that there being no plan or schedule; nor any compulsion for expeditious remediation of contamination; the remediation measures may not be implemented until functionally necessary or until ordered by the municipal or the provincial authorities.

[30] The Board was not provided with any market evidence by way of sale of similarly contaminated building in the municipality; to help establish the quantum of adjustment to be applied to the assessment in the current year.

[31] The fact that the property was in use as an auto dealership, until the owners moved the dealership to a new location; suggests no functional impediment due to the stated contamination. The Board finds that notwithstanding its state of contamination, the building continues to be usable in its present condition and remediation may be undertaken as part of a new development at the subject location.

[32] Section 289(2) of the Municipal Government Act, RSA 2000 c M-26 ('MGA') requires that the assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is impose. Based on the evidence of contamination; the Board grants an abatement of 25% of its assessed value in the current year; as the likely impact of the contamination on the market value of the subject building.

[33] In view of the above, the Board reduces the subject assessment for the building portion to \$557,775 ( $\$743,700 \times 75\% = \$557,775$ ); for a total current year assessment, including the value of land, to \$1,141,200 ( $\$583,500 + \$557,775 = \$1,141,275$  or \$1,141,200 rounded).

Heard September 05, 2019.

Dated this 27<sup>th</sup> day of September 2019, at the City of Cold Lake, Alberta.



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Jasbeer Singh, Presiding Officer

**Appearances:**

Ms. Debbie Tercier, Owner

Ms. Jennifer Philip, Business Development Coordinator

*For the Complainant*

Mr. Troy Birtles, Assessment/Taxation, City of Cold Lake

Mr. Joshua McMillan, Assessor, Assessment/Taxation, City of Cold Lake

*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 Disclosure document

R-1 Respondent’s Disclosure document