Decision: **CARB 0262 674/2015**
Complaint ID 674
Roll No. 9700310

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
Hearing August 19-21, 2015

PRESIDING OFFICER: J.R. McDonald
BOARD MEMBER: T. Hansen
BOARD MEMBER: A. Knight

BETWEEN:

EVRAZ INC NA CANADA

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: 9700310
MUNICIPAL ADDRESS: 27251 TWP RD 391
ASSESSMENT AMOUNT: $ 36,831,520 (Includes M&E Exempt $10,378,340)
Assessment Amount Less M&E + non-regulated railway = $26,446,800

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 is VARIED on the issue of Machinery and Equipment assessment (by removal of the tower); and is also VARIED on the issue of removal of GST from the assessed improvement amount. The new assessed value (less M & E and non-regulated railway) is $25,896,830. 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 to 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 steel pipe processing plant. The site totals 117.41 acres and is zoned Heavy Industrial District. A number of buildings on the site include a pipe mill building of 81,246 sf; a second similarly used warehouse of 70,278 sf; a 15,600 sf fabrication shop; a 25,100 sf industrial building with an 800 sf office mezzanine; gate house and an equipment shed. The improvement assessment also includes cranes, craneways, fuel tanks, shipping docks, industrial scale and site improvements. Machinery and equipment which process the steel are assessed as exempt property. The assessment for 2015 is land $ 15,846,300,and improvements at $10,606,880 minus the non-regulated railway $6,380 = $10,600,500 (pages 113 to 144 in R.1 and pages 33 to 63 of 360 in C.1).

[5] The 2015 assessment less M & E of the subject property describes it as non-residential property with M&E, and including land with improvements including M&E, warehouse, and railway (non-regulated).

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

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 at 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 at 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] The Complainants Rebuttal submission on pages 7 and 11 of 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.

[26] The assessment appears to include components of Machinery & Equipment ["M & E"], chattels or other components of non-assessable property that is captured either in error or misclassified.

Issues for Board Consideration

[27] 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 the following as 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?
2. Should Machinery and Equipment, or chattels, as identified by the Complainant, be included or exempt from 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 ONE - GST – Position and Evidence of the Complainant

[28] 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."*

[29] 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)).

[30] 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."

[31] 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)).

[32] 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)).

[33] 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)."

[34] 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."*

[35] 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."*

[36] 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."*

[37] 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."

[38] 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.

[39] The Complainant noted that the City of Calgary adjusts downward to account for GST.

[40] 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."

[41] The Complainant stated that the Respondents opinion that they 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.

[42] 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%."*

[43] 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."

[44] The Complainant submitted that a number of Municipalities do not include the GST, which the Complainant believes, is instructive for the Board.

[45] 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.

[46] 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.

[47] 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. (4th) 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.

[48] 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%.

[49] 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.

ISSUE ONE - GST - Position and evidence of the Respondent

[50] 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).

[51] 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."*

[52] 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.

[53] 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).

[54] 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)

[55] 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.

[56] 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.

[57] The Respondent provided a listing of steps in the M & S Calculator method (page 20 of R.1, point # 46).

[58] The Respondent noted in R.1, on pages 20 and 21 (point #48), that tax is an indirect cost in the M & S Calculator.

[59] 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.

[60] The Respondent stated that the questions the Assessor must ask with respect to the estimate of the value derived from M & S are these: "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-1, point # 58).

[61] 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.2; and
- further supporting examples shown on page 278 of R.4.

[62] 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).

[63] 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.1, point #84).

[64] 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."*

[65] 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*,

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

[66] 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.

[67] 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 …."

[68] 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.

ISSUE TWO - Machinery & Equipment, and Chattels – Position of the Complainant

[69] The Complainant stated that the City of Red Deer Assessment includes components of M & E, chattels or other components of non-assembly property that is captured either in error, or misclassified (page 2 of 360 in C.1).

[70] The 2015 Assessment for EVRAZ INC. NA CANADA, includes: 3 fuel tanks; 1 welded steel tank; 3 – 10 Ton bridge cranes and 1 - 20 ton bridge crane; 1 – 20 ton craneway and 3 – 10 ton craneways; and a truck scale for a total assessed amount of $486,870. The Complainant submits that these are assessed in error, and should not be assessed because they are chattels used for the enjoyment of the chattel (page 30 to 63 of 360 in C.1).

[71] The Complainant also noted that the assessment includes a self-supporting tower assessed at $21,000. The Complainant stated that at June 30 2014 that tower was no longer on site and should be removed from the assessment.

[72] The Complainant requested that the Board consider (in their deliberations for each of the properties being heard collectively), whether the identified items (including a crane,

craneway, automotive hoist, automotive fume exhauster, small above ground used oil tanks, above ground fuel tank with dispensing equipment and weigh scales) have lost their character as a chattel, and have become a tenants fixture?" And, is a tenant's fixture different from a normal fixture? The Complainant believes that this is the crucial issue, as the decision will have a direct impact on the City's assessments.

[73] The Complainant submits that M & E used as an integral part of an operational process and/or to service equipment are assessable as M & E and are not assessable as improvements to the freehold. (Interpretive Guide to the 2005 CCRG p. 7):
"CRANES AND CRANEWAYS
The costs of cranes and associated crane ways that are used as an integral part of an operational process and/or to service equipment are included and are assessable as machinery and equipment. The supporting foundations for the cranes and crane ways are considered machinery and equipment.
The costs of cranes and craneways that are not assessable as machinery and equipment, for example to load the finished product, are included and are assessable as structures."

[74] Further, the Complainant noted that Cranes, Craneways, Lifts, Bridge Cranes, and other Chattels used in manufacturing and processing are to be assessed as M&E as defined in the *MGA S.1(j) and S1(j)(i)(ii) of MRAT:*

MGA S.1(j)
(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;

MRAT S1(j)
(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,

[75] The Complainant submitted that as a result of capturing M & E, chattels, and other personal property in the Respondents assessment of improvements for the subject properties, they are inflated and cannot be considered fair and equitable.

[76] The Complainant defined a fixture as *"an article in the nature of personal property which has become so attached to the realty that it is regarded as part of the land"* (page. 220 of 360 in C.1).

[77] The Respondent submitted that M & E, Chattels, and other personal property are not assessable as improvements and are specifically excluded by virtue of their inclusion as regulated property. In CCRG page 142 **(**page 77 of 251 in C.2) states;

"2.000 A project cost may be excluded from assessable cost for one or more of the following reasons:

- *It is associated with property which is made exempt from assessment by the Act.*

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."

[78] The Complainant submitted that the M & E and other Chattels are not part of the land and improvements when they are being used for the sole business purpose of the trade conducted by the tenant. In support, the Complainant offered a number of case examples that determine whether or not an article has become a fixture or not:

- *Stack v. Eaton Co.* (1902) 4 O.L.R. 335 (Ont. Div. Ct.) Commonly referred to as the "Stack" test.
  The Stack test was cited in *Arctic Transit Mix and Concrete Products Ltd. v. Rolling Mix Concrete (Edmonton) Ltd.*, [1999] A. J. No. 424 (Alta Q.B.) (Page 222 of 360 C.1).In the Arctic Transit Mix case the judge referenced a decision in *Re Davis*, [1954] O.W.N. 187 at p.190:
  "…*if the object of the affixing of a chattel is to improve the freehold, then, even if the chattels are only slight affixed to the realty, they may well become part of the realty. If on the other hand, the object of the affixation of the chattels is the better enjoyment of the chattels, then the affixation does not make them part of the realty."*
- The Stack test as a better use test was again confirmed in *Canadian Imperial Bank of Commerce (CIBC) v. Alberta (Assessment Appeal Board),* [1990] A. J. No. 810 (Alta Q. B.) Justice Andrekson described:
  "*The test for deciding the object of annexation is this: was the object of affixing the article to improve the freehold or for the better enjoyment of the article as a chattel?"*
- *Re Burtex Industries v. Farmers and Merchants Trust Co. Ltd. et al,* (1964), 47 W.W.R.(N.S.) 96 (Alta. S. C.)
  "*The degree of affixation was clearly done for the better enjoyment of the machines, as machines and not with the intent and for the purpose of improving the freehold."*
- *Turismo Industries Ltd. v. Kovacs et al*, [1976] 1 W.W.R. 193 (B.C.C.A.), page 357 of 360 where the Stack Test was applied"
  "15 As to the object of annexation I think the evidence shows that such annexation as there was for the better use of the equipment to manufacture concrete blocks and not for the better use of the realty."
- *Blower and Sedens v. Workers Compensation Board* (1983) 50 A. R. 66, aff'd (1984) 68 A.R. 156, page 256 of 360:
  "22 The degree of annexation is function of the ease of severance and the amount of damage to the structure which would occur on severance. The more difficult the severance and the more extensive the damage, the more likely is the article to be seen as a fixture.

23 The test for deciding the object of annexation is this: was the object of affixing the article to improve the freehold of for the better enjoyment of the article as a chattel?" In this case the judge determined that the Crane was considered M & E and not part of the realty.

[79] Copies of relevant case precedent offered in the Complainants evidence are provided beginning at page 231 to 360 in C.1."

[80] The Complainant noted that on page 224 of 360 in C.1, *Edmonton (City) v. London Life Insurance Co.* [2002] A.M.G.B.O. No. 29 states:

"the MGB held that cranes, in this particular instance are "anything attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure"

As to whether the cranes in question transferred in the sale of the property with "special mention", the MGB found the evidence to be inconclusive. The MGB went further to provide an 'obiter dictum' in the explanation of the decision. That is, if the evidence had clearly shown that a transfer had taken place with "special mention" in the purchase of the property, the MGB would find that the articles in question do not fall to the definition of "improvement" under the MGA."

[81] The Complainant submitted a recent case: *1544560 Alberta Ltd. v Edmonton (City),* 2015 ABQB 520, where the issue was whether the CARB erred when it concluded that the assessment value was fair and equitable, without making an express finding on Market Value. The relevance of this case was that this CARB has a responsibility to determine if an assessment is fair and equitable and the standard is reasonableness. If the Complainant has provided sufficient evidence and therefore reasonably satisfied the CARB through its evidence, then the onus shifts to the Respondent to convince the CARB that it has met the standards set out in the matter, and therefore the onus transferred onto the Respondent to provide evidence to justify the assessment.

[82] In summation, the Complainant contends that M & E, chattels and other related personal property intended for the better use of the business and not for improvement to the freehold are not assessable as improvements by the City.

[83] The Complainant further offers that the Board should consider the Stack test and apply the Stack test to the assessment of Cranes and Craneways and chattels in the 2015 assessment of the EVRAZ INC.

ISSUE TWO - Machinery & Equipment, and Chattels – Position of Respondent

[84] The Respondent agrees that the assessed Tower of $21,000 was not on the site during inspection and therefore supports the request to have the tower removed from the assessment.

[85] The Respondent also noted that the assessment did not capture a 2 - ton crane, 2 – ton crane way, and two relocatable offices on the assessment notice, and requests that they be added to the assessment (page 121 of R.2) at the Board discretion.

[86] The Respondent submits that they have provided reasonable evidence to support their position that the Complainants five specific grounds for complaint have no merit (pages 2 and 3 of R.1).

[87] Addressing the complaint that the subject property assessment is not fair and equitable considering the value and assessment classification of comparable properties, the Respondent submits that each property is assessed in a similar manner, ensuring fairness and equity utilizing methods of mass appraisal.

[88] Addressing the complaint that the subject property aggregate assessment per square foot applied to the subject property is inequitable with the assessments of other similar and competing properties, the Respondent submitted that the subject property is assessed in a similar manner compared to assessments of other similar and competing properties.

[89] The Respondent submits that the Assessor has correctly utilized the Cost Approach to Value by the use and reference of the Marshall & Swift Commercial Estimator (M & S).

[90] The Respondent stated that the assessed property is properly classified, and that the current assessment for the subject properties represents an estimate of the market value at July 1, 2014, and reflects the characteristics and physical condition of the property on December 31, 2014.

[91] The Respondent stated that the subject property was assessed using the cost approach which the assessor believes is the appropriate method of valuation of the subject property, which is based on the principle of substitution when a property is replaceable.

[92] The Respondent explained the method used by the Assessor in applying the cost approach (page 17 of R.1)

a) Estimate land value as if vacant considering highest and best use
b) Estimate the replacement cost new of improvements …
c) Calculate depreciation … age … economic life
d) Add land value to the depreciated value of the improvements

[93] Quoting the International Association of Assessing Officers, the Respondent offered a definition of replacement cost new in the test “Property Assessment Value” Second edition, Chicago, Illinois, 1996 as follows:

“*Replacement cost is the cost of producing a building or improvements having the same utility, but using the modern materials, design and workmanship*.”

[94] The Respondent noted that the highest and best use of the property is not being challenged by the Complainant.

[95] With respect to the Complainants position that certain improvement such as; cranes, crane ways, gasoline tanks, oil tanks, water tanks, weigh scales, hoists, and fume exhausters, are chattels, the Respondent disagrees. The Respondent referred to the Stack test that was quoted in the decision by the panel in *MGB Order No. 127/04*, which the Respondent offers is the test that addresses whether or not certain articles were fixtures or chattels.

[96] Addressing the complaint by the Complainant that the subject property aggregate assessment per square foot applied to the subject property is inequitable with the assessments of other similar and competing properties, the Respondent submitted that the subject property was assessed in a similar manner with the assessments of other similar and competing properties.

[97] The Respondent explained that the basic steps in the M&S Calculator are: (page 20, R.1)

a) Determine the occupancy, class and overall quality of the building;
b) Select the base cost from the appropriate cost page;
c) If necessary, adjust the base cost for square foot refinements – heating and cooling, and elevators;
d) If necessary, adjust the cost for height and size refinements – number of stories multiplier, height per storey multiplier, floor area/perimeter multiplier;
e) Adjust the cost for time using the current cost multiplier;
f) Adjust the cost for location using the local multiplier;
g) If applicable, apply the additional cost considerations, insurance exclusions, and lastly, depreciation.

[98] The Respondent further explained that costs consist of all direct and indirect expenditures plus profit. M & S classifies buildings by occupancy and groups them into sections with other similar buildings. These classifications are applied to each property. Buildings are classified by type of framing (columns and beams, walls, floors and roof structures, and fireproofing. Quality levels are classified into “average quality or good quality”.

[99] The Respondent believes that the assessor has answered the question does the cost calculation derived through M & S truly represent the actual cost to replace the improvement (page 23 #58 R.1) by providing evidence in support of the Assessor’s method of determining cost to replace, ensuring it is a true representation of actual costs. Referenced the MGM Ford Lincoln (Roll 920090) included on page 104 of R.2. Also, on page 276 and 277 of R.4, the Respondent provided a Red Deer comparable in which the assessment and actual cost are within a few percent of each other and lower than the selling price.

[100] The Respondent provided a number of comparable assessments in the City of Red-Deer which have all been assessed, some in part, using the M & S in a similar manner as the

subject property (contained within Exhibit R.3). The Respondent states *"all have been accepted as correct and are not under complaint for the current assessment year.*"

[101] Based upon the Respondents interpretation of MGA s. 284(1)(j)&(u), which defines a structure, the Respondent indicated that it is the City's opinion that cranes, crane ways, hoists, fume exhausters, tanks, dispensing equipment and weigh scales are structures. [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;*]

[102] With respect to structures, the Respondent submitted that the City of Red Deer takes guidance from the following cases:

- *CARB Decision 127/04 R & S Resources Ltd v. County of Red Deer* (R.4 pages 376 to 394). The issue before the MGB was whether or not the Crane, Water Tanks and Nitrogen Tanks fall individually to one of three categories of an improvement: a structure, a thing attached to or secured to a structure, or machinery and equipment. The MGB found that the Crane and Crane ways form part of the building and are therefore an improvement and add value to the freehold. The MGB also found that the tanks are assessable as improvements.
- *Stack v. T. Eaton Co. et al,* (1902) 4 O.L.R. 335 (excerpts in R.4 pages 395 to 399), which provides the Stack Test shown in R.4 page 398.
- *Cardiff Rating Authority and Another v. Guest Keen Baldwins Iron & Steel Co. Ltd.*, (1949) 1 All E. R. (C.A.) (R.4 pages 400 to 413), supports the Respondents position that *"A thing which is not permanently in place is not a structure, but it may be in the nature of a structure if it has a permanent site and has all the qualities of structure, save that it is on occasion moved on or from its site."*
- *British Columbia Forest Products Ltd. v. Minister of National Revenue,* [1972] S. C. R. 101 (R.4 pages 414 to 429), *"A structure is something of substantial size which is built up from the component parts and intended to remain permanently on a permanent foundation, but it is still a structure even though some of its parts may be movable, as, for instance, about a pivot thus a windmill or a turntable is a structure."*

[103] In summation, the Respondent stated that the Complainant has not provided sufficient or compelling evidence that the assessed property is both unfair and inequitable considering the assessor has applied the appropriate classification to the improvements and therefore requests that the Board confirm the assessed value as submitted.

BOARD FINDINGS and DECISION

[104] 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.

[105] The Board finds that the tower noted on the assessment notice totalling $21,000 is to be removed as was agreed by both parties.

[106] The Board did not find compelling evidence that the 2 – ton crane, 2 – ton crane way and two relocatable offices identified by the Respondent (on page 121 of R.2) as having been missed on the assessment notice were present during the assessment period, and therefore will not adjust the assessment for these improvements.

ISSUE ONE – GST

[107] 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.

[108] 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).

[109] 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. (4th) 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.

[110] 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."

[111] 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 evidence in support of its view that the GST should be removed.

[112] 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."

[113] 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 Boards 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.

[114] 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 sifts to the Respondent to show that the assessment is correct."
"[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."

[115] 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 buy 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.

[116] 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.

[117] 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.

[118] 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."

[119] The Board finds that in the Tolko decision, the question is whether the Commercial taxpayer is eligible for ITC or not. The Board finds however in the matter before it 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?.

[120] 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.

[121] 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.

[122] 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.

[123] 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.

ISSUE TWO - Machinery & Equipment, and Chattels

[124] The Board finds that the Respondent has used the Cost Approach to Value and agrees that it is an appropriate approach to provide a reliable estimate of market value for assessment purposes for the properties under complaint.

[125] With respect to these improvements, the Board finds that the test of whether or not they are assessable improvements, or M & E, or Chattels not subject to assessment, must be met. The MGA defines improvements :
MGA 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;

MRAT further defines Machinery & Equipment:
MRAT 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,

[126] The Board finds that the Complainant is requesting that the Board reconsider the classification of the improvements provided by the Respondent, stating that they have been incorrectly classified as improvements and should be classified as M & E and/or Chattels.

[127] The Board finds Board Order *MGB 127/04 R & S Resources Ltd. v. County of Red Deer* very compelling evidence provided by the Respondent.

Quoting the Alberta Court of Appeal (page 4 of 19, found on page 379 of R.4) in "*Cardiff Rating Authority and Another v. Guest Ken Baldwins Iron Steel Co. Ltd.* [1949] 1 All E. R. (C.A.) *which defines a structure as follows"*:

"A structure is something of substantial size which is build up from component parts and intended to remain permanently on a permanent foundation, but it is still a structure even though some of its parts may be movable, as, for instance, about a pivot. Thus, a windmill or a turntable is a structure. A thing which is not permanently in one place is not a structure, save that it is on occasion moved on or from its site."

[128] As well, the above subject case referenced a case respecting the issue of whether or not certain articles were fixtures or chattels. That case is *Stack v. T. Eaton Co. et al,* (1902) 4 O.L.R. 335 which set out the test (Commonly referred to the Stack test.) The Board finds that the Stack test states:

"(1) *That articles not otherwise attached to the land than by their own weight are not to be considered a part of the land, unless the circumstances are such as to show that they were intended to be part of the land."*

(2) *The articles affixed to the land even slight are to be considered part of the land unless the circumstances as such as to show that they were intended to continue as chattels."*

(3) That the circumstances necessary to be shown to alter the prima facie character of the articles are circumstances which show a degree of annexation and object of such annexation which are patent to all to see."

(4) That the intention of the person affixing the article to the soil is material only so far as it can be presumed from the degree and object of annexation."

(5) That, even in the case of tenants' fixtures put in for the purposes of trade, they form part of the freehold, with right, however to the tenant as between him and his landlord, to bring them back to the state of chattels again by severing them from the soil, and that they pass by a conveyance of the land as part of it, subject to his right of the tenant."

The Board finds that the Respondents assesses all improvements including cranes and craneways, and other articles that appear to meet the Stack test for annexation and improvement.

[129] The Board finds that it does not dispute that the improvements under appeal appear to be improvements that may have M & E or Chattel characteristics. However, the Board was not provided clear and specific proof that they would be either, transferred with special mention by a transfer or sale of the structure, or that they are integral components of manufacturing and processing and should not be assessed because they are chattels.

[130] The Board finds that the Complainants evidence in support of the position that the identified M & E, equipment, and chattels should be exempt from assessment as improvements is not compelling because, in the opinion of the Board, the Complainant has failed to provide sufficient expert evidence to support its position in this appeal.

[131] The Board finds that the Complainant provided pictures, written and verbal submissions to support its position that the articles were M & E, equipment or chattels, and therefore should not be assessed, but did not provide to the Board specific proof that these articles were used in a manner so as to support the Complainants position that they should not be assessed as improvements.

[132] The Board acknowledges case law that outlines tests for whether improvements are improvements or M & E or Chattels, but in this instance, the case law provided by the Complainant gives guidance to the Board. The Board finds that the Complainant does not appear to have provided compelling evidence, leaving the Board with the difficult duty to determine if the improvements under appeal meet the test for M & E or Chattels or are assessable as improvements under the MGA.

[133] The Board finds the Respondents evidence quite compelling, and in light of the lack of specific proof to meet the evidence provided by the Complainant, the Board finds that it is unable to alter an assessment that is in the opinion of the Board fair and equitable.

[134] The Board acknowledges that the Complainant has requested that the Board consider (in their deliberations, for each of the properties being heard collectively) whether the items identified (including cranes, craneway's, and other articles) have lost their character as a chattel and become a tenants fixture? Further to this, is a tenant's fixture different from a normal fixture? The Complainant believed that this is the crucial issue, as the decision will have a direct impact on the City assessment.

[135] The Board finds that the Complainant has not provided compelling evidence to support their position with respect to assessment of chattels and the changing character of the Chattel. The Board is not prepared to make a blanket decision with respect to when and if a Chattel loses its character as a Chattel and become a tenants' fixture.

[136] The Board is of the view that evidence provided and analyzed through the filter of the *MGA, MRAT*, as well as case law such as the Stack test and a myriad of other case law, may be applied as a reasonable test for determining, in each case, the difference between improvements and M & E and Chattels.

[137] The Board finds that each property must be reviewed on basis of its own merit, under current legislation and case law. The Board further notes that the evidence must be conclusive to change the classification of an article.

[138] In accordance with *MGA*, s. 467 the Board finds it must not to alter an assessment that has been prepared properly and for which the Board has found insufficient evidence that would prove that the assessment has not been prepared properly or is not fair and equitable.

[139] The Board therefore confirms the assessment of the Cranes and Craneways for the Evraz complaint.

DECISION SUMMARY

[140] The Board finds that the Respondent value of the subject property is VARIED on the issue of Machinery and Equipment (removal of tower); and is also VARIED on the issue of removing the GST from the assessed improvement amount.

The new assessed value (less M & E /railway and with GST removed) is $25,896,830.

[Land $15,846,300 improvements $10,050,525 ($10,600,500 less $21,000 tower & less 5% GST) = $25,896,825 – rounded to $..,…,830].

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.

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.

APPENDIX "A"

Documents Presented at the Hearing
and considered by the Board

NO.	ITEM
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: *1544560 Alberta Ltd v Edmonton (City),* 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