

Central Alberta

Regional Assessment Review Board

Decision No.: CARB 0263 643/2014

Complaint ID: 643

Roll No.: 477274009

COMPOSITE ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: October 15th, 2014

PRESIDING OFFICER J. Fleming

BOARD MEMBER B. Schnell

BOARD MEMBER D. Moore

BETWEEN:

MLS INDUSTRIAL DEVELOPMENTS LTD.
(also referred to as "Melcor Developments Ltd.")

Complainant

-and-

ASSESSMENT & TAXES (Red Deer County)

Respondent

This is a complaint to the Central Alberta Regional Assessment Review Board in respect of the following assessment:

ROLL NUMBER: 477274009

MUNICIPAL ADDRESS: 37427 Range Road 273, Red Deer County (SW-27-37-27-W4)

ASSESSMENT: \$6,904,500.00

The complaint was heard by the Composite Assessment Review Board on the 15th day of October, 2014, in Red Deer County, in the province of Alberta.

Appeared on behalf of the Complainant: Tyler Hansen, Assistant Development Manager
Guy Pelletier, Vice President, Red Deer Region

Appeared on behalf of the Respondent: Brigitte Boomer, Assessment Manager
Brad Koopmans, Assessor
Karen Bernand, Assessor

JURISDICTION

- [1] The Central Alberta Regional Assessment Review Board (hereinafter, “the Board”) has been established in accordance with section 456 of the *Municipal Government Act*, RSA 2000, c M-26 (hereinafter referred to as, “the MGA”), and the Red Deer County Bylaw 2014/14.
- [2] Neither party raised an objection to any Board member hearing the complaint.
- [3] No procedural or jurisdictional matters were raised by either party.

PRELIMINARY MATTER

- [4] A potential Preliminary Matter was identified by the Board in that the Complainant provided in his complaint form that information requested pursuant to s. 299 of the MGA was incomplete. The Board asked the Complainant if they were satisfied with the information they received. The Complainant advised the Board that they did not understand how the adjustments were calculated. However, they confirmed that they were comfortable with the information received from the County, and at this point wished to proceed to the hearing.

BACKGROUND

- [5] The subject property is a 46.53 acre (more or less) parcel located in the McKenzie Industrial Business Park (hereinafter referred to as McKenzie Park) within the South West quarter of Section 27-37-27 west of the 4th Meridian. The subject property is currently not subdivided, but is separated into 3 sections (North East, Central, and South West) due to a pipeline Right of Way (hereinafter referred to as “ROW”), a 7.16 acre well site and the internal subdivision roadway (McCoy Drive & Midland Avenue).

ISSUES

- [6] The Complaint form identified a number of issues. However, at the hearing the Complainant advised they would be arguing the following matters:
 - a. How should the assessment address the existence of pipeline rights of way (ROW), and how should this land be valued?
 - b. How should the cost to complete the servicing of the property be accounted for in the valuation?
 - c. What adjustments should be made to arrive at a net area of the subject?

Complainant's Position:

- [7] In establishing an assessment for the property, the Complainant said that the Respondent failed to adequately account for the impact of the pipeline ROW's crossing the subject lands, and they failed to adequately consider that there were additional costs to bring the land to a "fully serviced" standard.
- [8] In addition, the Complainant advised that accessibility to parts of the site (the SW corner) was limited for the following reasons: 1) at this point in time, the cost of extending the road was excessive due to pipeline protection costs, and 2) the other "potential" access point to the SW corner, the proposed extension to McKenzie Road, had not yet been granted by the County. There was some concern expressed that the access would not be granted.
- [9] The Complainant submitted that the most appropriate way to establish a value for the subject was to use a Subdivision analysis method to estimate the future revenue, the total development costs, and to consider an appropriate developer's profit. They submitted that this was the method which would produce the most accurate estimate of value.
- [10] The Complainant advised that it was necessary to add the costs of the land, and in the opinion of the Complainant, it was practical to deduct the area of the ROWs from the gross area of the sites because one could not develop on the ROW's, and in most cases the area of the ROW could not be used at all. It was acknowledged by the Complainant that the surface title to the ROW remained with them, but the requirements that came with the pipeline operators sub-surface rights effectively limited the surface owner's use of the land.
- [11] The Complainant indicated agreement on the gross area of the site being 46.53 acres more or less. The Engineering plan in the evidence shows a total size of 46.94 acres, which was reduced by 7.17 acres for the area of the well site in the NE part of the subject, leaving a net area of 39.36 acres.
- [12] In the opinion of the Complainant, it is additionally necessary to deduct the areas of the ROW, the road dedication to the County, an additional internal road allocation, as well as a further 1.50 acres of land in the SW area which has limited or no access. In the opinion of the Complainant, this calculation results in a total NET useable area of 29.97 acres. They argue that these deductions are necessary because a purchaser in the marketplace will only pay for useable land.
- [13] The Complainant provided evidence of four sales of proximate industrial property containing ROW's, which they contended were sold at a price that netted out the ROW areas. These properties sold on a gross basis for rates from \$192,863 to \$249,267 per acre. But, when the Complainant calculated the price per acre netting out the ROW's, the price ranged from \$238,226 to \$300,000 per acre (with three of the four sales prices ranging from \$290,000 to \$300,000 per acre).

- [14] The Complainant provided a further summary of area sales which supported an average price of \$290,310 per acre, a number which supported the concept that the market was paying for net useable acres as they had demonstrated in the previous paragraph.
- [15] Turning to the issue of the remaining development cost that would be required to complete the servicing, the Complainant provided a summary of costs to complete the services for the subject lands. They warranted that these costs were developed by their consultants and totaled \$4,264,779 (depending on whether the Complainant would need to construct a pipeline crossing). No corroborating evidence was received to support this number.
- [16] The Complainant highlighted a two year old price from Transcanada to construct a crossing to access the SW portion of the subject (as noted in the previous paragraph). They pointed out that Transcanada alone is responsible for the contract, and the Complainant, as the owner, has no control over the contractor or the cost. This two year old estimate was \$1,100,000, and there was no guarantee that it would not go higher.
- [17] The Complainant argued that these costs were legitimate deductions from the market value as a valid cost to complete in order to bring the lands to a fully serviced standard.
- [18] The final component of the costs to be deducted from the market value was the matter of an entrepreneurial profit, which the Complainant argued was a necessary part of the developer's analysis. They argued that a profit between 20% and 25% was reasonable.
- [19] After applying all of the above factors to the subject property, the Complainant argued that the value of the subject ranged from \$2.1 million to \$3.6 million depending on whether the pipeline crossing was required. The numbers were developed as outlined in the chart below.

Item	Assuming Pipeline Crossing	Assuming NO Pipeline Crossing
Land Sales	\$8,510,950	\$8,510,950
Less: Remaining Costs	\$4,264,779	\$3,164,779
Less: Allowance for Developers Profit	\$2,127,728 @ 25%	\$1,702,190 @ 20%
Indicated Land Value	\$2,118,234	\$3,643,981

Respondent's Position:

- [20] The Respondent advised that the assessment had been prepared using the Direct Sales Comparison approach to value which they asserted produced a valid value estimate of \$6,904,500. They pointed out that this equated to \$175,419 per acre based on the net 39.36 acres.
- [21] The Respondent provided recent sales evidence to support a median market value for vacant parcels of industrial land in the area of \$298,246 per acre.
- [22] The Respondent noted that sales in McKenzie Park (where the subject property is located) over the past four years produced a median of \$275,300 per acre. They referred to a table of sales data, and submitted this was a list of all the sales, some of which were not comparable with the subject for a variety of reasons.
- [23] The Respondent did not provide an assessment detail report in their evidence. However, with the agreement of the Complainant, they provided a copy following the Complainant's rebuttal. It showed that the County had started with a base value of \$400,000 per acre for the 39.36 net acres. They had then applied two deductions: one of 21.1452% to recognize additional site improvements required; and a further 35% to recognize the larger size of the subject compared to other industrial parcels that had sold in the area.
- [24] When questioned about the base value, the Respondent noted that sales #1 and #7 in their McKenzie Park evidence were the same property which had resold for \$100,000 per acre higher after having additional work done on the site. Therefore, they reasoned that it was sensible to add \$100,000 to the fair market value (rounded) of \$300,000 for the subject to get an adjusted base market value of \$400,000 per acre.
- [25] In addressing the matter of whether the land was serviced, the Respondent noted that according to *Matters Regarding Assessment and Taxation Regulation, Alta Reg 220/2004* (MRAT) section 4(1), the land may be considered serviced. As additional support, they included a Calgary CARB decision 0724/2012-P, which made a similar finding.
- [26] The Respondent advised that it had met with the Complainant to discuss revised cost to complete servicing estimates, which were provided at the request of the Respondent. This information, contained in the Respondent's evidence, showed costs remaining of \$1,361,700 for the total North East and Central portion of the subject, and \$2,711,200 for the South West portion.
- [27] In addressing the concept of entrepreneurial profit, the Respondent provided an unattributed commentary which suggested that entrepreneurial profit is what is left over after deducting the Costs of the Project from the Sales Receipts of the project. It is not an attribute which should be added to the costs in order to calculate a sales price.
- [28] The Respondent concluded by asking that the assessment be confirmed at \$6,904,500.

Complainant's Rebuttal:

- [29] The Complainant provided a detailed Rebuttal addressing the following specific issues raised by the Respondent:
1. The property is not fully serviced.
 2. The Subdivision Development Analysis is a legitimate means of establishing value, similar to the Direct Sales Comparison Approach.
 3. The price per acre for the subject needs to be reasonable given its condition comparable to other sales in the area.
 4. The sale of one large site (intended to remain as one site) is not a valid comparable for the subject.
 5. Two common sales should not be used because the first sale was not a truly valid sale, and the second sale was over-improved compared to other industrial land sales in the area. Thus, a comparison is not valid.
 6. The Complainant prepared a "weighted" average sale analysis based on size, which showed lower prices per acre.
 7. The existence and location of the ROW's can and do have an impact on value.
 8. The 1.70 acre road dedication and 1.50 acre South West portion with access restrictions should not be included in assessed parcel calculation.
- [30] The Complainant reviewed the Respondent's method of valuation, and provided three examples of sales in neighboring industrial subdivisions that supported a reduced value per acre for sites containing a pipeline ROW.
- [31] In the Complainant's evidence, the price per acre for land with pipeline ROW's was between \$210,000 and \$250,000 per acre (with 3 sales/listings around \$250,000). The price per acre for land not encumbered by pipeline ROW was from \$290,000 to \$300,000 per acre. The Complainant indicated that this supported the fact that land with a pipeline ROW had a lower value.
- [32] The Complainant also highlighted that the 1.70 acre Roadway dedication on the South West lands was a condition of subdivision without compensation. They argued that this land should not be included in the assessed parcel, because they would have no use of the land upon subdivision.
- [33] Finally, the Complainant again raised the fact that the 1.50 acre portion of the South West portion of the property was not accessible (without great cost) and therefore was worthless.
- [34] In summary, the Complainant argued that when properly adjusted for the impaired market value due to the pipeline ROW's, the cost to complete the servicing for the subject, and the need for an economic incentive, the assessment of the subject should be reduced to a range of \$2,118,434 to \$3,643,981.

[35] The Complainant concluded by requesting the lower value at \$2,118,434.

BOARD DECISION:

[36] The Board considered the argument and evidence of both parties.

[37] In reviewing the information, the Board determined that it was necessary to establish;

- a. The fair market value of the land, and in doing so, to determine the impact that the pipeline ROW's should have on the value.
- b. The level of servicing of the land, and find any appropriate adjustments necessary to bring the land to a fully serviced state.
- c. Any other adjustments to the market value that are required in order to arrive at a final assessment.

What is the Market Value of the Subject:

[38] In reviewing the information, the Board noted that there was general agreement (from the sales analysis of both parties) that the \$298,246 per acre (or thereabouts) was reasonable market value for fully serviced industrial land in the area. Given this agreement, the Board finds that \$298,246 per acre is the fully serviced value per acre.

[39] The Board did not accept the \$400,000 base value from the County for a number of reasons. First, throughout their submission, the Respondent accepted a market value of \$298,246 per acre as noted in the previous paragraph. Secondly, the Board accepts the evidence of the Complainant that one of the sales used to establish an additional \$100,000 value "might" not be valid, and this was not adequately refuted by the Respondent. Finally, the Board accepts the position of the Complainant that, irrespective of the validity of the sale, the additional \$100,000 in value for the second sale reflected items which took the property beyond "fully" serviced. It was reasonable to assume that the first sale was fully serviced.

[40] In order to further consider the value, the Board reviewed the evidence on the impact of the ROW on the subject lands. The Respondent commented that there was a sale of a pipeline impacted property (Lot 6 McKenzie Park) that sold for \$249,267 per acre.

[41] The Respondent provided the same pipeline impacted sale in their evidence and provided three more examples in their Rebuttal. All of these examples supported a pipeline impacted value in the vicinity of \$250,000 per acre.

[42] Accordingly, the Board concludes that pipeline impacted land has been demonstrated by both parties to have a market value of \$250,000 per acre.

Is the Land Fully Serviced:

- [43] The Board heard a lot of argument and evidence on this issue. The Complainant provided a summary, which they indicated came from their Consultants, that outlined remaining costs to service ranging from \$3.1 million to \$4.3 million depending on whether a pipeline crossing was required or not. They also provided further evidence to the County (Aug. 2014) in which they suggested a total of \$4.1 million was a reasonable estimate of the remaining cost to service. It is not clear from the evidence, nor was it stated at the hearing, whether the County accepted the final \$4.1 million number.
- [44] The Respondent asserted that the property was fully serviced based on the requirements of MRAT, and that services were available to an adjacent lot.
- [45] In addition, the Respondent provided a variety of County forms (Completion Certificates), as proof that servicing had been completed.
- [46] In reviewing the evidence, the Board noted that the Complainant had provided no evidence from their Consultants to confirm the costs or to certify what fully serviced meant. The Board heard many comments as to whether services to the next lot meant fully serviced, or whether there needed to be stubbed off services to the property line.
- [47] In the final analysis, the Board did not need to address this issue. The Board was unwilling to accept the Complainant's evidence on costs because there was no back-up or support, and no agreement by the parties on the servicing costs.
- [48] However, when the Board reviewed the Assessment Detail Report (provided by the Respondent at the end of the hearing), it was clear that the Respondent had made calculations which contemplated the expenditure of funds by the property owner. While it was not entirely clear in the basis for the calculations, it appeared reasonable that some allowance was being made by the County for further work.
- [49] Accordingly, the Board accepted the use of the Respondent's Assessment Detail Report methodology as the basis for the assessment.
- [50] The Board accepts the Respondent's assessment methodology based on two facts. In the first instance, the Board was unwilling to accept the Cost to complete from the Complainant because of lack of evidence. Without an effective challenge from the Complainant, the Board determined that the information from the Municipality was an appropriate method to use as the basis for the assessment.
- [51] The basis for the assessment from the Municipality addresses the issue of cost to complete the servicing, by reducing the value by some percentage.

Other Adjustments:

- [52] The South West portion of the lot is subject to a road dedication upon subdivision totaling 1.70 acres. The property owner must cede this land for no compensation. These are agreed facts. The Respondent maintains that until the land is subdivided, the road dedication area is under the care and control of the Complainant and the value of the land remains with the Complainant.
- [53] The Complainant argues that the land is effectively not under their care and control, and its value is zero, because it must be ceded upon subdivision without compensation.
- [54] The Board concludes that because the land is the subject of a well-defined dedication upon subdivision without compensation, the 1.70 acres has no value for the Complainant and should be deducted from the gross acreage.
- [55] The Board acknowledges there is an argument that the land may be retained by the Complainant with value if they choose not to subdivide. This was not argued as a likely outcome by either party, and the Board agrees.
- [56] The Complainant also argued that there was a portion of the property in the SW (approximately 1.50 acres) which had no access potential mainly because it required additional pipeline crossing's to provide access, and therefore should have no value.
- [57] There was potential access external to the subdivision on the west, however the Complainant provided a letter from the County suggesting access was unlikely.
- [58] The Board reviewed the evidence with respect to this matter. Although there was a suggestion that access would not be available from the west, the Board did not receive sufficient evidence that access would be disallowed from the west, although access from the south (McKenzie) did not appear to be available.
- [59] In addition, there was ample evidence from the two existing crossings that pipeline crossings were granted, which would allow access. The issue was what the cost would be for the access. It was an agreed fact that the cost of the access was location specific, and the costs ranged from zero to an estimated \$1,100,000.
- [60] The Board received no evidence from the Complainant as to the cost of the potential access in this location. Accordingly, the Board concluded that without further evidence as to whether the crossing was possible, and what the crossing might cost, the Board was unwilling to find that the land was inaccessible and had no value.
- [61] One of the other issues that impacted on this question was whether the pipeline ROW had any value. The Complainant asserted that their calculations showed that the ROW's had no value because the value per acre calculated from excluding the area of the ROW showed that the assessment per acre equated to the market value for the net acreage.

- [62] The Board reviewed the sales and use evidence of the “pipeline impacted properties” and concluded that in most cases the pipeline land was being used for storage at the very least, and as well, contributed to the development potential of the property.
- [63] Accordingly, the Board concluded that the pipeline land had some value that was reflected in the sales price of the property.
- [64] One of the other issues noted in the hearing was the method of valuation used by the Complainant. The Board notes that the goal of the valuation process is to produce market value. While the Respondent argued that the Subdivision Development Analysis (SDA) method was not a legitimate valuation method, the Board concluded that the SDA was a legitimate basis for analysis because it captured all of the components of value, resulted in an estimate of market value, and was not shown to be logically flawed by the Respondent .
- [65] Due to the Board’s acceptance of the methodology used by the County to determine the assessment, the Board did not find it necessary to comment or decide on the question of “entrepreneurial profit”.

Summary:

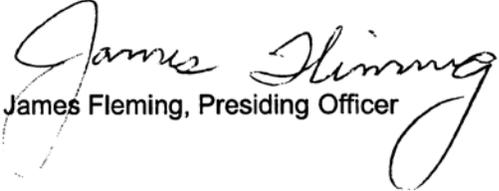
- [66] In summary, the Board determined that the market value of the land was \$250,000 per acre for the acreage not including the wellsite (39.36 acres).
- [67] The 1.70 acres of land dedication in the SW portion of the site should be subtracted from the total area, leaving a net of 37.66 acres.
- [68] The calculations from the Assessment Detail Report from the County should be applied to the value (Site Improvements – 21.1452% and Site -35%).
- [69] Following the application of these factors, the resulting assessment is \$4,128,929, truncated to \$4,128,500.

DECISION SUMMARY:

[70] For the reasons noted above the assessed value of the subject property is VARIED as follows:

Roll # 477274009: varied from \$6,904,500.00 to \$4,128,500.00.

Dated at the City of Edmonton, in the Province of Alberta this 13th day of November, 2014 and signed by the Presiding Officer on behalf of all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.


James Fleming, 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 Act 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

<u>NO.</u>	<u>ITEM</u>
1. A1	Agenda
2. C1	Complainants' Submission
3. C2	Complainants' Rebuttal
4. R1	Respondents' Submission
5. R2	Respondents' Market Land Details

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<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB				