



Complaint ID 0377 2045
Roll No. 3906183001

LOCAL ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: SEPTEMBER 23, 2024

PRESIDING OFFICER: D. WIELINGA
BOARD MEMBER: K. SHANNON
BOARD MEMBER: D. WILLIAMS

BETWEEN:

OWEN SELENT

Complainant

-and-

ASSESSMENT SERVICES DEPARTMENT
For CLEARWATER COUNTY

Respondent

This decision pertains to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by an Assessor of Clearwater County as follows:

ROLL NUMBER: 3906183001

MUNICIPAL ADDRESS: SE 18 39 6 West of the 5th, Clearwater County

ASSESSMENT AMOUNT: \$224,000

The complaint was heard by the Local Assessment Review Board on the 23rd day of September 2024, via video conferencing.

Appeared on behalf of the Complainant: Owen Selent, Property Owner

Appeared on behalf of the Respondent: Darren Pohl, Assessor
Rob Kotchon, Assessor
Amber Hawkings, Assessment Technician

DECISION: The assessed value of the subject property requires no change at \$224,000.

JURISDICTION

- [1] The Central Alberta Regional Assessment Review Board [“the Board”] has been established in accordance with section 455 of the *Municipal Government Act*, RSA 2000, c M-26 [“MGA”].

PROPERTY DESCRIPTION AND BACKGROUND

- [2] The subject property is a 95.98 parcel of land zoned Agricultural “A” located within the municipality of Clearwater County. The subject property current assessed as Residential with a value of \$224,000.

PRELIMINARY MATTERS

- [3] The Presiding Officer confirmed that no Board Member raised any conflicts of interest with regards to the matter before them.
- [4] Neither party raised any objection to the panel hearing the complaint.
- [5] No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the complaints.

ISSUES

Should the subject property be classified Residential or Farmland?

POSITION OF THE PARTIES**Position of the Complainant**

- [6] Through its written submissions, the Complainant noted the subject property is mostly bog and swamp spruce land. There is a large treed, sand ridge that runs from the SE corner and heads off towards the NW middle of next quarter. The land has never been farmed by himself or the previous owners. Nor have they even grazed cattle on it, due to the boggy condition of this land. It is noted there is also no water well, power, or gas going to the subject property. Further stating that they own the two acreages north of this parcel (9 and 13 Country Lane) which are on the NE 18-39-6-5 of the subject.
- [7] The Complainant argues from the time of purchase (May 2014) through to 2022 the subject property (95.98 acres) has been classified by the Respondent as 100% Farmland and assessed in accordance with this classification. However, the assessment classification was changed on 2022’s assessment.
- [8] The Complainant determined through communication with the Respondent that upon review of ariel photographs of the subject property it was determined a Residential classification would be applied. The Complainant was unaware of the issue, nor was this communicated outside of the notice that was issued that year. It was shortly after the complaint deadline that the Complainant became aware of this change. Since this was after the deadline, he paid its taxes as filed an assessment complaint the following year.

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- [9] The Complainant was told by the Respondent that the subject property does not meet the three requirements of farming operations meaning the raising, production and sale of agricultural products.
- [10] The Complainant explained that his production value is minimal as his rhubarb was maturing and production value will grow in the future. The Complainant stated that he feels he doesn't have answers from Clearwater County as to how an assessment is done to determine whether or not his land is farmland.
- [11] In the absence of clarification from the Respondent the Complainant contacted Richard Chaney, Alberta Municipal Affairs, as shown in his written submissions (exhibit C1). The Complainant provided email documentation between himself and Richard Chaney, dated August 22, 2023. In the correspondence the Complainant was seeking clarification about what is the minimum production and income that he must do to have the subject property classified as Farmland. Mr. Chaney stated:
- "There is no specific amount of crop or number of animals that have to be raised or sold to qualify for farm status, but rather the criteria set in MRAT, 2018 must be met in order to be considered a farming operation for property assessment and taxation purposes. The legislation only requires that there is evidence of ongoing farm activity meeting the definition of farm operations."*
- [12] The Complainant stated the income level and production level from 2022 that was shared with the Respondent would qualify for the classification as it meets the three criteria farming operations such as the raising, production and sale of agricultural products. The Complainant admitted to the Board that he was not able to provide proof of sales / income for last assessment year however the issue was rectified for this year's review.
- [13] Through its written submissions the Complainant provided photos and commentary of the sales of Rhubarb. He noted that Rhubarb was planted in 2022, trees were removed in December of 2021 through March of 2022 making room for additional rows in hopes of making it more productive. The complainant produced in evidence (exhibit C.3), an e-transfer for \$2.00 for the total sales of rhubarb in 2023. For the 2024 year the Complainant stated they harvested 87 lbs of Rhubarb and had cash sales of \$261 or roughly \$3/lbs, this is higher than what was produced and sold in 2023.
- [14] The Complainant's horticulture venture is still maturing, he questions if any grace can be provided due to required timeline from maturing crops to selling the product. The Complainant concedes if in the interim Farmland is assessed as Residential until income can be generated, however, if incorrect requests the Board to assign the Farmland classification to the subject property.

Position of the Respondent

- [15] The Respondent indicated that the subject property is a 95.98-acre parcel of land zoned "A" under Clearwater County's bylaws as follows.

13.4 (1) AGRICULTURE DISTRICT "A"

THE GENERAL PURPOSE OF THIS DISTRICT IS TO ACCOMMODATE AGRICULTURAL LAND USES AND TO CONSERVE GOOD AGRICULTURAL LAND.

A. PERMITTED USES

1. First residence
2. Farming and non-residential farm buildings
3. Second residence on a lot that is 32 hectares (80 acres) or larger

NOTE:

1. In the Agriculture District "A", farming and non-residential farm buildings, are "deemed approved" uses.
2. On a residential parcel in the Agriculture District "A", a minor agricultural pursuit for the exclusive enjoyment of the occupants is "deemed approved".

- [16] The Respondent explained that the subject property does not meet the definitions of farming operations as outlined in the Matters Relating to Assessment and Taxation Regulation, 2018, A.R. 203-2017 (MRAT).
- [17] The Respondent stated upon review of aerial photographs that were taken in 2022 of the subject property it was discovered that no farming operation was present.
- [18] The Respondent noted that a holiday trailer was visible in the 2022 aerial photograph, which was found in the southeast of the subject property. Through discussions with the Complainant, it was indicated the property was used for camping and walking.
- [19] The Respondent referred to the aerial photographs of exhibit R.1. pages 5 and 6 and stated that of the entire subject property of 95.98 acres, the cleared area is equal to one acre.
- [20] The Respondent indicated that he believes the piece of land to be a personal garden and even if it is deemed to be for production, the land does not meet the standard, stating it must be over an acre in accordance with the regulations, MRAT Section 1(b) which states:

"1 In this Regulation,

(b) "agricultural use value" means the value of a parcel of land based exclusively on its use for farming operations; "

- [21] The Respondent indicated that the use of the subject property and the improvements do not meet the requirements to be considered for the farmland classification. If the land cannot be used for farmland (crops and livestock), then it would be valued at market value. The Respondent indicated that the amount of land used for growing rhubarb is like looking at a parcel of land within a parcel of land as indicated in Section 7(4) of MRAT.
- [22] Due to those findings the Respondent changed the classification to Residential in accordance with the section 7 of MRAT which states in part as follows:

“Valuation standard for a parcel of land

7(1) The valuation standard for a parcel of land is

- (a) market value, or
- (b) if the parcel is used for farming operations, agricultural use value.

(3) Despite subsection (1)(b), the valuation standard for the following property is market value:

- (a) a parcel of land containing less than one acre; ...
- (b) a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
- (c) an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;
- (d) an area of 3 acres that
 - (i) is located within a parcel of land, and
 - (ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
- (e) is located within a parcel of land, and can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel; any area that
 - (i) is located within a parcel of land,
 - (ii) is used for commercial or industrial purposes, and
 - (iii) cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
- (f) is located within a parcel of land, is used for commercial or industrial purposes, and cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel; an area of 3 acres or more that
 - (i) is located within a parcel of land,
 - (ii) is used for commercial or industrial purposes, and
 - ((iii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.

(4) An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.”

- [23] The Respondent stated they do not have to accept all the information the Complainant brought forward. This is supported in Section 295.1 of the MGA:

“Assessor not bound by information received

295.1 An assessor is not bound by the information received under section 294 or 295 if the assessor has reasonable grounds to believe that the information is inaccurate.”

- [24] The Respondent concluded that based on the evidence presented they request the Board to confirm the assessment.

BOARD FINDINGS and DECISION

- [25] The Board notes that in Alberta, when preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property in accordance with the MGA s 297(1):

“Assigning assessment classes to property

297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

- (a) class 1 - residential;
- (b) class 2 - non-residential;
- (c) class 3 - farm land;
- (d) class 4 - machinery and equipment.”

- [26] The Board observed from the aerial photographs provided by the Respondent on pages 5 and 6 (exhibit R.1) that the subject property is predominantly covered by trees that are not part of a managed or commercial forest operation. In addition, the Board notes the Complainants description of the subject property from exhibit C1 pg. 2 confirms the land is mostly bog and swamp spruce land.

- [27] The Board accepts the Respondent’s position that the treed land is not being used for any qualifying agricultural or farming purpose. Tree coverage, if not connected to agricultural production typically leans towards residential or recreational land use.

- [28] The Board supports the Respondents position that when utilizing the tool of aerial photography, the assessment class of the subject property was amended from farmland to residential. The Board accepts the position that there were no visible farming operations taking place, as defined in the MRAT.

- [29] The Board then reviewed MRAT sections 1(b) and 2(1)(f).

- [30] The Complainant is using less than one acre of the 95.98 acres for agricultural use, therefore the Board notes that one acre would not imply the subject property is being used exclusively for agriculture pre MRAT section 1(b) as noted earlier in paragraph 22 of this decision. The Board did not give weight to the complainant’s evidence of \$2.00 in total sales for 2023 as support for the land being used exclusively for agriculture.

- [31] The Board does recognize that the Complainant is using a small area of the subject property as horticulture land. However, the Board puts significant weight on the term “exclusively” as the majority of the subject property is not used for agriculture. Therefore, the Board accepts the Respondent’s position that less than one acre of the subject property is being used for farmland.
- [32] The Board notes horticulture (the farming of plants) is only occurring on a small portion of the subject property. Further, the Board determines that this is incidental or secondary to the primary nature of the land. The small scale of this activity does not meet the threshold to qualify for a farmland classification.

MRAT s. 2(1)

“2(1) For the purposes of Parts 9 to 12 of the Act and this Regulation,

- (f) “farming operations” means the raising, production and sale of agricultural products and includes (i) horticulture, aviculture, apiculture and aquaculture,”

- [33] The Board concludes that based on the above the Board accepts the Respondents classification of the subject property.

DECISION SUMMARY

- [34] The Board finds that the original assessed value is \$224,000 with a land designation of residential requires no change.
- [35] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 23rd day of October 2024 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.

Lori Stubbard

L. Stubbard, Board Clerk
on behalf of
D. Wielinga, Presiding Officer

If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for judicial review to be filed and served not more than 60 days after the date 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>EXHIBIT NO.</u>	<u>ITEM</u>	<u>PAGES</u>
A.1	Hearing Materials	10
C.1	Complainant Submissions – “Mr. Chaney reply”	06
C.2	Complainant Submissions – “Emails from County Tax Department”	06
C.3	Complainant Submissions – “Pictures from the 96 acres 2022 2023”	08
C.4	Complainant Submissions – “tax appeal”	14
C.5	Complainant Rebuttal	18
C.6	Complainant Rebuttal – correction	01
R.1	Respondent Submissions	27