

Central Alberta

Regional Assessment Review Board

Decision # LARB 0377 644/2014

Complaint ID 644

Roll No.: 3907103001

ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: September 17, 2014

PRESIDING OFFICER Al Gamble

BOARD MEMBER Velma Keller

BOARD MEMBER Allan Knight

BETWEEN:

JEAN-ANN STEWART

Complainant

-and-

CLEARWATER COUNTY

Respondent

[1] This is a complaint to the Central Alberta Regional Assessment Review Board in respect of a property assessment entered in the 2013 Assessment Roll as follows:

ROLL NUMBER: 3907103001

MUNICIPAL ADDRESS: RR2 Site 8 Box 5, Rocky Mountain AB T4T 2A2

ASSESSMENT \$173,660

[2] The complaint was heard by the Local Assessment Review Board (hereinafter referred to as "the Board") on the 17th day of September, 2014, in the Council Chambers at Clearwater County.

[3] Appeared on behalf of the Complainant:

- Jean-Ann Stewart

[4] Appeared on behalf of the Respondent:

- Jennifer McQuoid, Property Assessor
- Denniece Crout, Property Assessor

JURISDICTION

[5] The Central Alberta Regional Assessment Review Board has been established in accordance with section 456 of the *Municipal Government Act R.S.A. 2000, ch M-26* (hereinafter, "the MGA") and the *City of Red Deer Assessment Review Board Bylaw 3441/2009*.

[6] Neither party raised any objections to any Board member hearing the complaint.

[7] No procedural or jurisdictional matters were raised by either party.

PRELIMINARY MATTER

[8] No Preliminary Matter was brought forth.

BACKGROUND

[9] The subject property is a 37.7 acre parcel of land within the SE 10-39-7-5, with a 20'x30' shed that has plexi-glass opening window and 1x8 wood siding. The property has a garden shed, two portable toilets, and no services to the property (water, sewer, power or gas). Access to the property is through a dirt road of the adjacent piece of property owned by a neighbor. An Easement for access through the neighbor's property has not been obtained or registered. The parcel in question is linked to NW 10-39-7-5 on the certificate of title.

ISSUES AND FINDINGS

[10] The Board has identified the following issues:

1. Should a 3 acre parcel of the subject property be classified as Residential?

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Complainants Position:

[11] **Complainant:** The Complainant stated that there is no public road access to the property, and that there is no easement or provision for a road allowance from the Clearwater County on the land. Further, to access the property you must first pass through the adjoining piece of land and that the dirt road is not an all season road, during adverse weather conditions it is impassable and in heavy rainfall there is flooding.

[12] The Complainant referred to five pictures that were provided to the Board in the Complainants submission C1, pages 7-9 illustrating that the property is located on a flood plain, and advised the Board of the damage and loss of land in those years. Due to the damage the land could never be a consideration for a place of residence.

[13] The Complainant argued that due to the limited access and usage the property should be considered and classified as farmland.

[14] The Complainant asserted that the building referred to in the assessment is condemned, and it has never been use as a residence or cottage. There are no services attached to the free standing structure, therefore it is not liveable and the assessment classification should be returned to farmland, as it had been for the last 30 years.

[15] **Respondent:** The Respondent stated that it was discovered by Arial photos in R1, Tab B, Pages 16-18, as well as physical inspection, that a portion of the parcel has a 600 sq. ft. structure built on a concrete slab, a fire pit, a small storage shed and two portable toilets, therefore it is for recreational use and is not being farmed.

[16] The Respondent referred to Section 1(i) and Section 4(3)(c) of the *Matters Relating to Assessment and Taxation Regulation 220/2004* ("MRAT"):

1(i) "farming operations" means the raising, production and sale of agricultural products.

[17] Additionally, the Respondent referred to Section 4(3)(c) of MRAT:

(4) The valuation standard for a parcel of land

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

(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.

and stated that pursuant to the legislation the subject property is assessed as both residential and farmland classification, as a portion of the property does not meet the definition of farm land. The Respondent stated that if the Complainant had stored hay, or some sort of farming equipment or chemicals that would assist in farming operations with respect to the structure, it could be classified as a farm building and then the 3 acre parcel could be classified as farm land.

[18] **Board Finding:** Although the Board can appreciate that the Complainant has had two floods on the property, and feels that she is unable to place anything permanent such as a residence on the property, the legislation is clear in that there are specific requirements for a property to be classified as farm land. Section 297(1) in part says, "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 (c) class 3 -farmland....." and further to that 297(4)(a) and (c) of the MGA states:

297(4)(a) "farmland" means land used for farming operations as defined in the regulations.

297(4)(c)"residential" in respects to property, means property that is not classified by the assessor as farm land".

[19] Based on the foregoing, the Board finds that the use of the building is not for farming operations as defined in MRAT s.1(i), and that the assessment classification remains residential.

2. What is the market value of the property?

2. **What is the market value of the property?**

[20] **Complainant:** The Complainant provided the board with an appraisal by Ken Walters. The appraisal did not assign any market value to the buildings and the Complainant said she was advised that there is no value to the property other than farm land because there is no public access and the property is located on a flood plain.

[21] The Complainant advised that the property has been flooded the last several years. Several feet of erosion in the east corner had taken place and due to the effects of the flooding the property is not usable for permanent structures.

[22] The Complainant argued that although the Respondent valued the property at a 25% increase of value due to its location adjacent a major body of water such as the Clearwater River, it should be valued at a 25% decrease because of being located on a flood plain.

[23] The Complainant stated that the 600 square feet structure could not be used as a residence or cabin as there are no services, there is limited access to the property, and limited usage because of the flood plain.

[24] **Respondent:** The Respondent advised the Board that they believe that flooding does not adversely affect the property value, and further that flooding is temporary and does not adversely affect the non-farmland use.

[25] The Respondent argued that there is legal access via the Clearwater River, and with respect to accessing the property an easement for the NE quarter could easily be obtained and registered for at a Land Titles Office. The Respondent argued further that access through the adjacent property is considered an implied easement.

[26] The Respondent stated that the 3 acre parcel is arbitrarily applied to the property, and that it could apply to any developable part of the property.

[27] The Respondent presented one comparable property that was used in assessing the subject property. The Board was advised that sales of property with no direct road access and river frontage are infrequent. The comparable used was a land locked muskeg quarter section of land located 10 km NE of Rocky Mountain House, which sold for \$170,000 after being on the market for two years.

[28] In calculating the assessment the Respondent also used a median value of land sold from July 1, 2012 to June 30 2013 for parcel sizes ranging from 148.2 acres to 159.29 acres and the Median was determined to be \$247,000. Using the median value and applying it to the land locked quarter a 31% decrease in value was applied to the 3 acre market value site.

[29] Market analysis indicates that all residential and non-residential property directly adjacent to major bodies of water increase value by 25%. This influence was also applied to the property.

[30] The Respondent presented that they have applied some adjustments to the 3 acre site, and that they're requesting a reduced assessment of \$118,590 from \$171,200. Upon a site inspection the Respondent is requesting a reduction of the value of improvements to \$7,030 from \$33,700. And further the Respondent is recommending a total assessment for the property of \$128,070. This is made up of \$118,590 for 3 acres, \$7,030 for improvements and \$2,450 for farmland.

[31] **Board Finding:** The Respondent stated that if a recreation use were to be located on a farm land parcel with a residential three acre assessment included at market value, an additional three acre parcel would not be assessed to that same parcel if a recreational use were to physically exist. However, the subject property is a parcel of farm land with a building that is not used in a farming operation, with no other site valued. Therefore, the board finds that the Respondent has assessed the recreational use as residential classification as per legislation.

[32] Notwithstanding, once the Respondent applied adjustments for the comparable being landlocked and adjacent to water the Board finds that the comparable is reasonably comparable to the subject and provides a reliable indication of market value.

[33] However, the Board is concerned that no adjustment were made by the Respondent due to the property being located on a flood plain.

[34] Despite this the onus is on the Complainant to provide sufficient evidence to justify a change to the assessment, with no evidence to the contrary the Board accepts the value put forth by the Respondent.

SUMMARY

[35] For the reasons noted above the assessed value of the subject property is VARIED based on the recommendation of the Respondent as follows:

Roll #39071103001 reduced from: \$173,650 to \$128,070

Dated at the City of Red Deer, in the Province of Alberta this 17th day of October, 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.



Al Gamble, 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

NO.

ITEM

1. A1 Agenda
2. C1 Letter dated July 14, 2014, Complainant's Disclosure
3. C2 Letter dated August 22, 2014, Complainant's Disclosure
4. C3 Complainant's Rebuttal
5. R1 Respondent's Disclosure

