

Central Alberta

Regional Assessment Review Board

Decision: **LARB 0194 654/2015**

Complaint ID 654

Roll No. 194-090019218

LOCAL ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: June 8, 2015

PRESIDING OFFICER: R. Schnell

BOARD MEMBER: T. Hansen

BOARD MEMBER: V. Keeler

BETWEEN:

Edith Lovlie Beach and Danny Beach

Complainant

-and-

City of Lacombe

Respondent

This is a complaint to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by the City of Lacombe Assessor as follows:

ROLL NUMBER: 194-090019218

MUNICIPAL ADDRESS: Lot 19, 4516-45th Ave

ASSESSMENT AMOUNT: \$ 621,000

The complaint was heard by the Local Assessment Review Board on the 8th day of June, 2015, in the Council Chambers at the City of Lacombe, in the province of Alberta.

Appeared on behalf of the Complainant:

Ken Cruickshank, Counsel for property owners.

Observers: Larry Glenn, Vonnie Glenn, Lorne Green, Phyllis Green, Todd Green, and Eddie Beach.

Appeared on behalf of the Respondent:

Warren Powers, Lacombe Assessor / Eloise Comrie, Lacombe Assessor

DECISION: The assessed value of the subject property is CONFIRMED.

JURISDICTION

- [1] The Central Alberta Regional Assessment Review Board [“the Board”] has been 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*.

PROPERTY DESCRIPTION AND BACKGROUND

- [2] For the purpose of the hearing proceedings, three properties, all located in the City of Lacombe [“the City”], in the province of Alberta, were combined and heard collectively. However, three separate decisions will be issued, one for each of the following properties under complaint:
1. Lot 18 - 4520-45th Ave, property owners: Lorne, Phyllis, and Todd GREEN
 2. Lot 19 - 4516-45th Ave, property owners: Danny and Edie BEACH
 3. Lot 20 – 4512-45th Ave, property owners: Larry and Vonnie GLENN

The decisions for these properties will have the same content except for the cover page and appendix page, which will reference details particular to each property.

PRELIMINARY MATTERS

- [3] The Board Chair confirmed that no Board Member raised any conflicts of interest with regard to the matters before them.
- [4] Neither party raised any objection to the panel hearing the complaint.
- [5] The Board noted there was no Agent authorization form included with the complaints, and confirmed that Mr. Cruikshank was authorized to act on behalf of all three property owners noted in paragraph [2].
- [6] The Respondent raised a preliminary issue indicating that they did not receive the Complainant disclosure as prescribed on the Notice of Hearing. The Respondent requested that the complaint be dismissed and not heard by the Board.
- [7] The Complainant stated that they were under the assumption that the parties had met their disclosure requirements when they provided their disclosure to the Clerk on May 15, 2015. The Complainant apologized for the error and suggested that the hearing could be postponed, allowing the Respondent to review the Complainant Disclosure package.
- [8] The Board recessed to deliberate on the preliminary issue of non-disclosure.
- [9] The Board reconvened and stated that according to *Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009 [“MRAC”] s 4(2) the Complainant must disclose to both the Respondent and the Local Assessment Review Board. However, the Board acknowledges that the Complainant was of the understanding that by providing disclosure to the Clerk of the Board, the Clerk would then pass this information onto the Respondent, thus meeting their obligation under the Regulations.

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- [10] The Board weighed the right of the Complainant's full disclosure to be heard with procedural fairness to the Respondent.
- The Board stated that *MRAC* 6(2) gives a LARB the authority to expand the time for Complainant disclosure by written order. The result would afford the Complainant the opportunity to meet their disclosure requirements in addition to affording the Respondent the ability to prepare their case based on full disclosure.
 - The Board then looked to the Respondent who clarified and confirmed that the City did receive the initial complaint documents on February 2, 2015.
 - The Board then looked to the Complainant to clarify which additional documents are included in the May 15, 2015 disclosure that was not included in the initial complaint documents submitted on February 2, 2015.
 - The Complainant indicated that much of the information in the disclosure was also included in the initial complaint. However, there are a few public documents, a map, and a summary of argument that was not included in the initial complaint documents that the Respondent would not be aware of.
 - The Complainant advised that they could proceed with only the initial complaint documents as evidence, if required, but would prefer to provide the Respondent the necessary time to review the Complainant disclosure submitted to the Clerk of the Board on May 15, 2015.
- [11] The Board called for a brief recess to allow the Respondent to determine how much time they would require to adequately review the additional documents in the Complainant's disclosure of May 15, 2015, which the Respondent had not previously received.
- [12] The Board reconvened, and the Respondent confirmed that after a review of the additional documents, they were prepared to proceed with the merit hearing as scheduled with the Board allowing the Complainant's disclosure to be entered and referenced as evidence.
- [13] The Board made an order under *MRAC* (6)(2) as follows: "The time specified in *MRAC* 4(2)(a) with respect to the Complainant's May 15, 2015 disclosure is expanded to the time of the hearing proceedings on June 8, 2015."
- [14] The Respondent confirmed they did not require an opportunity to amend their disclosure based on their review of the Complainant's May 15, 2015 disclosure.
- [15] The Complainant confirmed that all documentary evidence is included in their submission, and they did not require a rebuttal submission.
- [16] A second preliminary issue was brought forward by the Respondent asking for clarification on a reference to Lot 21 in the Complainant's disclosure materials. There is no evidence of a complaint before the Board on Lot 21.
- [17] The Complainant indicated that they had intended to bring a complaint forward on Lot 21.
- [18] The Board confirmed that there was no complaint before the Board on Lot 21, and the City has received no complaint form or fee for same.

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- [19] The Complainant requested that they be able to refer to Lot 21, even though it is not under complaint.
- [20] The Board confirmed, and the parties agreed, that the Complainant may refer to Lot 21 in argument, but the Board would not make any findings or rulings pertaining to Lot 21.
- [21] No additional preliminary or procedural matters were raised by any party. Both parties indicated they were prepared to proceed with the hearing.
- [22] The Board confirmed the submissions of the parties and entered the following Exhibits into the record:
- A.1 Hearing Materials, including Complaint Form, Letter and additional materials submitted February 2 by Complainant, and Notice of Hearing
 - C.1 Complainant Submission, referring to all three subject properties
 - R.1 City of Lacombe submission for property owner GREEN
 - R.2 City of Lacombe submission for property owner BEACH
 - R.3 City of Lacombe submission for property owner GLENN

ISSUES

- [23] The Board considered the parties' positions and determined the following questions are to be addressed within this decision:
1. Is the property exempt from taxation?
 2. Is the property assessable?
 3. Does the assessed value reflect market value?

POSITION OF THE PARTIES

Position of the Complainant

- [24] The Complainant submits that that value of the properties under complaint is nil and requested that the assessment be reduced to zero.
- [25] The Complainant stated that the subject properties are located within a floodway. The Complainant submitted a map titled "City of Lacombe Base Map 1:2,799," included in Exhibit C.1, indicating the location of the subject property within a floodway. The Complainant indicated that the area within the pink highlighter lines is a floodway.
- [26] The Complaint further stated that the location of the subject properties in a floodway has a negative effect on value for the following reasons:
- Mortgage lenders and insurers are reluctant to be involved with properties within floodways because of the inherent risk;
 - The subject property is not eligible for disaster assistance.
 - Additional restrictions on building and development significantly limit the use of the property.

[27] The Complainant submitted an email in support of the claim that insurers are reluctant to be involved with properties located in a floodway. The email is dated May 11, 2015, sent from a representative of a local insurance agency to Kenneth Cruikshank.

The email states:

“at this point to my knowledge flood coverage is not available to purchase for personal property with the markets we have. Aviva is introducing overland water coverage sometime in May but I have not seen the wordings as of yet so I cannot comment on the coverage.”

[28] The Complainant explained that the Glenn’s approached the City of Lacombe in the summer of 2014, looking to build on Lot 21, which is adjacent to Lot 20 that is under complaint. The Complainant submits that the City informed the Glenn’s that the property is in a floodway, and they would not be permitted to build as they had planned.

[29] The Complainant submitted, within Exhibit C.1, a letter from the Canada-Alberta Flood Damage Reduction Program, which states:

“In the event of a flood, only those developments existing prior to the date of designation or new developments located in the flood fringe which are flood proofed to an acceptable standard will be eligible for flood disaster assistance.”

[30] The Complainant suggested that all three subject properties are located within a floodway, and built following the date of designation, which would disqualify them from eligibility for the disaster assistance program.

[31] The Complainant stated that appraisals of the subject properties were completed by William Haldane as follows:

- Lot 18 property owner GREEN: appraised value of \$800,000.
- Lot 19 property owner BEACH: appraised value of \$850,000.
 - Note pertaining to Lot 19: A Comparative Market Analysis completed by Boyd Williams of Royal Lepage Lifestyles Realty provided the opinion that the property would be listed in the \$965,000 - \$1,000,000 range.
 - The Comparative Market Analysis stated, *“it is beyond the scope of the evaluation to take any environmental concerns into account.”*
- Lot 20 property owner GLENN: appraised value of \$640,000. These appraisals were prepared under the assumption that the properties were not located in a floodway.

[32] The Complainant stated that the appraiser was not willing to provide an appraisal of the property that would take the floodway condition into account. The Complainant submitted that the appraiser stated the property was worth nothing, when taking the floodway into account. However, counsel provided no documentary evidence of the appraiser’s opinion.

[33] The Complainant concluded that due to circumstances beyond the owner’s control, their property value has substantially diminished. The Complainant submits that the assessment should be nil, or at the very least substantially reduced.

Position of the Respondent

- [34] The Respondent referenced *MGA* s 289(2)(a), stating that the assessment must reflect the physical condition of the property as of December 31, 2014. The properties were erect and habitable on the condition date.
- [35] The Respondent indicated that the assessments were based on the fee simple interest of the properties, unencumbered.
- [36] The Respondent further stated that the assessments were prepared using mass appraisal, as legislatively required.
- [37] The Respondent stated that the burden of proof lies with the Complainant, and the onus rests on the Complainant to challenge the assessment.
- [38] The Respondent asserted that the location of the properties does not exempt them from assessment for taxation purposes, and referenced recent flooding in other municipalities where there is continued assessment of those properties.
- [39] The Respondent stated that the Complainant did not provide any evidence to support eligibility for tax exemption.
- [40] The Respondent stated that none of the evidence submitted by the Complainant points to a zero dollar assessment. No comparable sales were provided by the Complainant.
- [41] The Respondent pointed out that the appraisals, indicating a value of the subject properties, which were referenced by the Complainant, are higher than the assessed values.
- [42] The Respondent indicated that there was no consideration given to a floodway in the assessment of the subject property, and further stated that even if the subject properties were located in a floodway, it is considered irrelevant to the assessments.
- [43] The Respondent requests the Board to confirm the assessment as presented.

BOARD FINDINGS and DECISION

ISSUE ONE – Is the property exempt from taxation?

- [44] The Complainant checked box 10 in Section 4 of the complaint form, questioning if the property is exempt from taxation.
- [45] The Respondent stated that the property is not exempt from taxation merely due to its location or environmental characteristics, and no argument was made by the Complainant in reference to legislation that would grant an exemption.
- [46] The Board was not presented with any evidence to support the notion that the properties are exempt from taxation. Based on the lack of evidence presented, the Board finds that the subject properties are not exempt from taxation.

ISSUE TWO – Is the property assessable?

- [47] The Complainant checked box #9 within Section 4 of the complaint form questioning if the property is assessable. However, the Complainant did not make oral submissions on this item and the Complainant did not provide documentary evidence in support of this issue.
- [48] The Respondent stated that the assessor is required by legislation to assess the property each taxation year.
- [49] The Board finds that the properties are assessable.

ISSUE THREE – Does the assessed value reflect market value?

- [50] The Complainant submitted a map titled “City of Lacombe Base Nao 1:2,799,” which was marked up with a pink and yellow highlighter to show that the area is in a floodway. The map does not include any official reference to a floodway or flood risk designation.
- [51] There was no agreement between the two parties as to whether the map correctly depicts the subject property location within a floodway or flood risk area.
- [52] The Complainant submitted being in a floodway can result in:
- Restrictions on building/development;
 - Reduction in permitted/discretionary land uses;
 - Higher difficulty or potential inability to obtain mortgage financing;
 - Higher difficulty or potential inability to obtain property insurance; and
 - Ineligibility for disaster assistance.
- [53] The Complainant made oral submissions on the effect that the floodway would have on the subject property, but did not provide the Board with any supporting documentary evidence.
- [54] The Complainant did not submit any appraisal report, professional opinion, or written material into evidence to substantiate its’ position that the value of the subject property was negatively affected by its location.
- [55] The Board finds that the Complainant did not prove on a balance of probabilities that the properties are located within a floodway.
- [56] The Board further finds that even if the property is located within a floodway, the Complainant did not prove that there is a negative effect on the market value of the property as a result of being in a floodway.
- [57] The Board finds that the assessment is prepared within the parameters required by the Regulations.

DECISION SUMMARY

[58] The Board finds that the Respondent's assessment values are CONFIRMED.

[59] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 8th day of July, 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.



Robert Schnell
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

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| 1. A.1 | Hearing Materials with Complaint and attachments, and Notice of Hearing |
| 2. C.1 | Complainant disclosure submitted to Clerk of the Board on May 15, 2015 |
| 3. R.2 | Respondent submission(s) for property owner BEACH |

