

# Central Alberta

Regional Assessment Review Board

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Decision: **CARB 0262 702/2016**  
Complaint ID 702  
Roll No. 30008800070

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COMPOSITE ASSESSMENT REVIEW BOARD DECISION  
HEARING DATE: November 15 and 18, 2016

PRESIDING OFFICER: E. Williams  
BOARD MEMBER: A. Gamble  
BOARD MEMBER: Z. Ordman

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BETWEEN:

LEGACY INC.

Complainant

-and-

CITY OF RED DEER

Respondent

This decision pertains to a merit hearing in regard to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by an Assessor of The City of Red Deer as follows:

ROLL NUMBER: 30008800070  
MUNICIPAL ADDRESS: SE 36-38-28 W4M  
ASSESSMENT AMOUNT: \$7,111,300

Appeared on behalf of the Complainant:  
Shari L. Lewis, legal counsel  
Allan Fertig, owner of Legacy Inc.

Appeared on behalf of the Respondent:  
Anna Meckling, Assessment Coordinator and Analyst, Revenue and Assessment  
Jason Miller, Sr. Assessor, Revenue and Assessment

**DECISION:** The Board determined the property assessment is to be varied. The revised property assessment is \$1,678,900 (rounded). Reasons and direction are contained in the decision.

## **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 *Matters Related to Assessment Complaints* Alta Reg. 310/2009 [“MRAC”], and The City of Red Deer Bylaw No. 3474/2011, *Regional Assessment Review Board Bylaw*.

## **PROPERTY DESCRIPTION AND BACKGROUND**

- [2] The subject property is assessed partly as farm land assessed at a value of \$31,200 and partly as non-residential assessed at a value of \$7,080,100, for a total assessment value of \$7,111,300.
- [3] The subject property is a quarter section of land identified as SE 36-38-28 W4M, within the boundaries of the city of Red Deer, in the province of Alberta. This property contains several land acreage areas, but all are contained within one certificate of title. The assessment calculations reflect the land acreage areas as described in paragraph [24].
- [4] The Complainant filed a complaint with the Regional Assessment Review Board on March 18, 2016 with comments on the complaint form indicating the Complainant would be unavailable for a hearing between June 15 to September 15, 2016.
- [5] Notice of Hearing was sent out on May 26, 2016 with the merit hearing scheduled for November 15, 2016.
- [6] The Complainant filed disclosure on October 3, 2016, and on October 18, 2016 the Respondent requested a preliminary hearing to address issues related to the Complainant’s disclosure.
- [7] Notice of Preliminary Hearing was sent out on October 19, 2016 with the preliminary hearing scheduled for November 4, 2016.
- [8] A one-member preliminary CARB hearing was held on November 4, 2016, with the decision sent to the parties on November 9, 2016. Paragraph [29] of the decision required the Complainant strike certain comments from their disclosure and submit this to the Clerk of the Board by November 14, 2016. No other changes or additions were to be made to the Complainant’s disclosure.

## **PRELIMINARY MATTERS**

- [9] The Board confirmed neither party raised any objection to the panel hearing the complaint.
- [10] The Respondent raised two preliminary matters pertaining to the following documents:
1. Complainant’s disclosure provided as required by paragraph [29] of Decision PREC 0262 702/2016; and
  2. Complainant’s Rebuttal disclosure document.

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[11] The Board heard both preliminary matters, the details of which are presented in the following subsections titled:

- a) Preliminary Matter – Complainant’s Initial Disclosure; and
- b) Preliminary Matter – Complainant’s Rebuttal Disclosure.

**Preliminary Matter – Complainant’s Initial Disclosure**

[12] The Respondent raised a preliminary issue pertaining to the Complainant’s disclosure provided as required by paragraph [29] of Decision PREC 0262 702/2016. The aforementioned decision required that:

- a) identified and mutually agreed to statements were to be stricken from the disclosure prior to the November 15, 2016 merit hearing.
- b) the Complainant remove the identified lines and submit six (6) copies to the Clerk by November 14, 2016, and no further changes or additions will be made to the disclosure

[13] The Respondent advised that they only received the Complainant’s amended disclosure on the morning of the merit hearing, November 15, 2016. Based on their initial review of this disclosure document, the Respondent raised issues that the amended disclosure as filed on November 14<sup>th</sup>:

- a) had approximately 40 additional changes including a renumbering of the pages, all of which are beyond those changes required by Decision PREC 0262 702/2016; which
- b) would constitute new evidence that was not disclosed within the provisions of *MRAC* 8(2)(a)(i), disclosure of evidence; and
- c) should be considered inadmissible, with the evidence excluded as per *MRAC* 9(2) Failure to disclose, thus the hearing should not proceed.

[14] The Complainant stated that:

- a) the disclosure contained no new evidence or changes of substance,
- b) the changes were those required by Decision PREC 0262 702/2016; and
- c) perhaps when the requested changes were processed there may have been an impact on the formatting/layout of the document which resulted in the additional changes referenced by the Respondent.

[15] The Board considered this preliminary matter and decided:

- a) the Complainant’s November 14, 2016 amended disclosure contained no new evidence or changes of substance which would create a new disclosure not previously provided under the provisions of *MRAC* 8(2)(a)(i), Disclosure of evidence;
- b) on the principles of Natural Justice, the hearing would proceed to the merit;
- c) the parties would jointly review the November 14, 2016 disclosure to ensure that the changes are either those required by Decision PREC 0262 702/2016 or changes in format/layout resulting from the process of removing the required statements; and
- d) the joint review of the required deletions would be provided to the Board and accepted into evidence for the merit hearing;

[16] The Board confirmed the portion of the November 14, 2016 disclosure with redacted comments was now acceptable to both parties and proceeded with the hearing. The redacted portion of the disclosure includes pages 1 to 7 of 55 total pages in Exhibit C1.

**Preliminary Matter – Complainant’s Rebuttal Disclosure**

[17] The Respondent stated that the Complainant’s Rebuttal disclosure comprised of several documents, some of which contain instances of improper rebuttal or statements which are accusatory, as well as sections of new evidence. Further, the Respondent would like to submit a Surrebuttal in response to the Complainant’s Rebuttal.

[18] To facilitate the party’s discussion of the preliminary matter, the Board identified the Rebuttal disclosure as Exhibit C2, containing documents follows:

- C2-1 Agent Authorization;
- C2-2 Affidavit of Allan Fertig, sworn November 7, 2016;
- C2-3 Order in Council related to land annexation from Red Deer County;
- C2-4 Emails re: City Offer to purchase disputed lands;
- C2-5 Appraisal of Property;
- C2-6 Letter from The City of Red Deer May 30, 2013;
- C2-7 Letter from The City of Red Deer May 17, 2016.

[19] The Respondent submitted that:

- a) there appears to be a splitting of the case (Respondent submitted case law on this);
- b) the Complainant’s Rebuttal refers to easements in regard to the subject lands, and the Surrebuttal contains land titles and detail for clarification on this matter;
- c) *MRAC* s 9(2) Failure to disclose applies in respect of certain portions of the rebuttal;
- d) there are no objections to C2-1;
- e) the inappropriate comments in C2-2 be stricken or given no weight, specifically the comments identified in paragraphs, 4, 5, 19, 30, 39;
- f) the annexation is not referenced in the disclosure and C2-3 should be rejected; and
- g) documents C2-4, C2-5, C2-6 & C2-7 are new evidence and are post facto, thus they should be rejected.

[20] The Complainant contended that all of the documentation is relevant to the issue before this Board, even if not specifically referred to in the Respondent’s disclosure and testimony.

[21] The Board considered the preliminary matter related to the Rebuttal and decided:

- a) C2-2: paragraph’s 4 and 39 will be removed in their entirety
- b) C2-2: requested deletions in paragraphs 5, 19 and 30 will be deleted;
- c) C2-2: paragraphs 8, 26 and 34 will be left in the Affidavit;
- d) C2-3, C2-4, C2-5, C2-6, and C2-7 will be accepted and the Board will give appropriate weighting during deliberations;
- e) the case law related to the potential of splitting the case is accepted and identified as Exhibit R3, and the Board will give appropriate weighting;
- f) the Surrebuttal with land title is accepted and is identified as Exhibit R4.

[22] The Board confirmed and entered the following Exhibits into the record:

- A1 - Clerk Hearing Materials (Agenda cover page plus 9 pages)
- C1 - Complainant disclosure package (55 pages)
- C2 - Complainant rebuttal package (multiple sections as noted in paragraph [18])

- R1 - Respondent disclosure package (161 pages)
- R2 - Copy of PREC 0262 702/2016 (6 pages)
- R3 - Respondent Case Law package
- R4 - Respondent Surrebuttal package

## **ISSUES**

- [23] The Board confirmed the issues under complaint are as noted under section four of the Complaint Form, with four boxes checked off, including #1, 3, 4, and 6. The parties confirmed these are the issues before the Board.
- [24] The Board determined the 2016 Property Assessment Notice of \$7,111,300 relates to 129.55 acres of land (the subject property) which is assessed and breaks down as follows:
- a) 111.0 acres assessed as farm land and not included in the complaint;
  - b) 4.05 acres assessed as industrial (this area is not under contention) for which the industrial use on this portion was grandfathered in at the time when the land was annexed to The City of Red Deer from Red Deer County in 2007 (Exhibit C2-3);
  - c) 14.5 acres assessed as industrial; this parcel is the basis of this complaint;
  - d) 3.34 acres which are described as waste and are not assessed.

Therefore, as noted above and supported by the Assessment Details – Summary Report, the total assessable land area is 132.89 acres, of which 129.55 acres has been assessed.

- [25] The Board considered the party's positions and determined the issues before the Board as follows:
- a) Should the 14.5 acre portion of the subject land that is in question be assessed as farm land, or is it correctly assessed as industrial land?
    - i. If the 14.5 acre land portion is assessed as farm land, what is the assessment amount at the regulated farm land rate?
    - ii. If the 14.5 land portion is assessed as industrial land, what is the correct assessment amount based on market value?

## **POSITION OF THE PARTIES**

- [26] The Board noted that the Complainant and Respondent each presented substantial evidence varying in its relevancy. In the interests of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.
- [27] In respect of decisions of the Board, the Municipal Government Board and the Alberta Court of Queen's Bench which are submitted as evidence in support of the parties' positions, it should be noted that those decisions were made in respect of issues and evidence that may be dissimilar to that before this Board.

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**Position of the Respondent**

- [28] The Respondent submitted that the condition of the 14.5 acres at December 31, 2015 is the basis on which the land was assessed. At that date and through 2015 the land was not eligible for identification as class 3 farm land due to a transition in the use of the land. For the purposes of assessment and the provisions of *MGA 297*, the Respondent argued that the 14.5 acres in question should be identified as class 2 non-residential.
- [29] In support of their position, the Respondent submitted that:
- a) in 2014 the Complainant applied and was approved for a Clearing and Grading Permit (Permit No. 2014-008);
  - b) the permit was for lands identified as the "Allan Dale Lot Expansion Site Map" which is the 14.5 acres in question;
  - c) there are photographs that clearly show the clearing, stripping, grading and the installation of industrial chain link security fence around the 14.5 acres (photos 1 to 5 on pages 26 to 28 of Exhibit R1);
  - d) in late December 2014 and early January 2015 a number of trailers were moved on to the 14.5 acres for the purposes of storage;
  - e) on January 29, 2015 a Stop Order was issued as the storage of the trailers was not a permitted use and the trailers were subsequently removed from the 14.5 acres;
  - f) in 2015, as the land had been stripped and graded, there was insufficient growth to support the swathing and bailing of a hay crop;
  - g) between August and October 2015, four (4) llamas were moved on to the property.
- [30] Based on the evidence provided, the Respondent submitted that the 14.5 acres in question has transitioned from farm land to industrial land and thus it was assessed in an equitable manner to nearby and similarly developed lands.
- [31] Three comparables were selected and these supported an assessment value of \$375,000 per acre. The Respondent provided a summary of comparables and aerial photographs to identify their location in proximity to the 14.5 acres in question (Exhibit R1).
- [32] As additional support for their position, the Respondent spoke briefly to a number of Composite Assessment Review Board Decisions which are included in evidence.
- [33] In summary, the Respondent argues that the actions by the Complainant in 2014 and 2015 show that the 14.5 acres in question was being transitioned from use as farm land to use as industrial land. The Respondent submits that the assessment of the 14.5 acres as industrial vacant is supported by evidence, and the assessment should be confirmed.

**Position of the Complainant**

- [34] The Complainant submitted that the 14.5 acres has been farm land for a number of years. For the purposes of assessment and the provisions of *MGA 297*, the 14.5 acres in question should be identified as class 3 farm land and not class 2 non-residential. On December 31, 2015, the condition of the land was farm land.

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- [35] In further support for their contention that the land should be classified as farm land, the Complainant reviewed a number of sections of the *MGA*, *MRAT*, and the *Agricultural Operation Practices Act*, providing definitions of agricultural land and farm land.
- [36] The agricultural operations on the 14.5 acres in question has included annual swathing and baling of the hay grown on the lands over several years and the pasturing of a small number of llama's transferred in from the landowner's main llama operations. In support of contention that agricultural operations are taking place on the land in question, the Complainant reviewed the photographs on pages 41 to 54 of Exhibit C1.
- [37] The Complainant acknowledged that the 14.5 acres in question has been fenced to contain the llamas as well as to provide security for the llamas and for the trailer business which is on the lands immediately adjacent to the land in question. Although fenced, there is a gate connecting the 14.5 acres to the 111 acres of farm land. There is no gate from the 14.5 acres to the 4.05 acres which is used and assessed as industrial.
- [38] To address low lying areas, in 2014 the owner initiated some dirt work and grading on the lands (photographs on pages 38 and 39 of Exhibit C1). The Complainant argues that these actions did not change the use of the land, which has been and remains as agricultural use on farm land.
- [39] The Complainant submitted that work on the lands in 2014 necessitated that the lands be reseeded in 2015. The reseeded meant that there was no hay crop in 2015 but there was sufficient growth for a small number of llamas to be pastured there starting in August.
- [40] The Complainant further submitted that the current land uses are detailed in section 7.1 of The City of Red Deer *Land Use Bylaw 3357/2006* ["*LUB*"], which identifies the area in question as being zoned for A1 - Future Urban Development District. The General Purpose of this District is to allow agricultural and related uses until such time as the land is required for urban development.
- [41] The current agricultural use of the land by the Complainant is one of the Permitted Uses under *LUB* s 7.1(a)(i).
- [42] The Complainant acknowledged that their actions to remove dirt and grade the lands as well as to park trailers on the land was a misunderstanding. As soon as they were advised of being out of compliance with The City of Red Deer's requirements, the necessary permits were obtained and actions were taken to align with the requirements.
- [43] In summary and in respect of the 14.5 acres in question, the Complainant submitted:
- a) the area has been and continues to be used for agricultural purposes;
  - b) the current land use complies with The City of Red Deer *LUB* s 7.1(a)(i); the land is used for agricultural purposes including haying operations and grazing for llamas; and The City of Red Deer has never officially challenged this use;

- d) when the use of the land was temporarily out of compliance with the *LUB*, such as the storage of trailers, The City of Red Deer issued a Stop Order to ensure compliance with the *LUB* which does not currently allow for industrial use on the portion of land in question;
- e) the physical condition of the property at the time of the assessment, which was farm land with agricultural operations, is the basis for determining land use and value, and not a potential future use (*MGA* s 289(2)(a));
- f) the classification of the land under the provisions of *MGA* s 297(1) is class 3 farm land and not class 2 non-residential; and
- g) the assessment is to be based on the regulated farm land rate as specified in the *Alberta Farm Land Assessment Minister's Guidelines*, 2013.

### **BOARD FINDINGS and REASONS**

- [44] The Complainant's position is that the lands have been and currently are being used for agricultural purposes, which is a Permitted Use within the *LUB*. The actions taken on the lands in 2014 and 2015 were not intended to discontinue the agricultural uses but to address the low areas on the lands. Once the activities were completed, the lands were reseeded to continue the haying and grazing operations on the lands. The lands are farm lands and should be classified and assessed on that basis.
- [45] The Respondent's position is that the lands may have been used for agricultural purposes in the past, but the actions taken in 2014 and 2015 by the Complainant were to prepare the lands for future industrial development. Therefore, the land should be classified as class 2 non-residential lands and assessed on that basis.
- [46] The Board refers to the *MGA*, *MRAT*, the *Agricultural Operation Practices Act* for guidance on the definitions of farm land and agricultural practices. Further, the Board refers to *LUB* s 7.1 for Permitted Uses.
- [47] Based on the evidence and the Board's interpretation of the legislation, the Board finds the lands are currently being used for agricultural purposes based on the following:
- a) the current haying operations and the grazing by llamas;
  - b) The City of Red Deer has taken no action to stop agricultural use of the land;
  - c) the agricultural use is a Permitted Use under the *LUB*;
  - d) the Complainant ceased all non-agricultural uses when notified by The City of Red Deer of non-compliance;
  - e) the actions by the Complainant to investigate the future development potential of the lands is an examination of feasibility, costs, and options. This investigation is not a commitment to change the use of the lands; and
  - f) no application has been filed by the property owner for a change in use of the lands or for any subdivision or separation of title or another designation other than agricultural (as described in Exhibit C2-3 Appendix C, Order in Council).
- [48] The Board concludes that at December 31, 2015, the lands in question were used for agricultural purposes and should be assessed as class 3 - farm land. As a result, the 14.5 acre parcel in question is assessed at the regulated farm land rate of \$350/acre. Thus the total assessed value of the 14.5 acres is reduced from \$5,437,500 to \$5,075.

[49] As a result of the varied assessment for the 14.5 acres in question, the total assessment for Roll 30008800070 is reduced to \$1,678,900 (rounded).

**DECISION SUMMARY**

[50] For the reasons noted above, the Board has determined the subject property assessment is varied. The revised property assessment is \$1,678,900.

Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 16<sup>th</sup> day of December, 2016 and signed by the Presiding Officer.



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Earl Williams  
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 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](http://www.albertacourts.ab.ca).*

**APPENDIX**

Documents Presented at the Hearing and considered by the Board.

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EXHIBIT NO.

ITEM

Clerk Materials

A1 Clerk Hearing Materials (Agenda cover page plus 9 pages)

Complainant submissions

C1 Complainant disclosure package (155 pages)

C2 Complainant rebuttal package (multiple sections)

C.2-2 Affidavit of Allan Fertig

C.2-3 Order in Council

C.2-4 Copies of emails

C.2-5 Appraisal report (58 pages)

C.2-6 Letter from The City of Red Deer

C.2-7 Letter from The City of Red Deer Engineering

C3 Legacy Land Valuation – requested assessment amount (1 page)

C4 Legacy Inc. Summary submission (14 pages)

Respondent submissions

R1 Respondent disclosure package (161 pages)

R2 Copy of Preliminary Hearing decision for the same complaint (6 pages)

R3 Case Law (20 pages)

R4 Sur-rebuttal containing certificates of title related to the assessed property