

Central Alberta

Regional Assessment Review Board

Decision No.: LARB 0263 566/2013

Complaint ID: 566

Roll No: 448051009

LOCAL ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: 12 SEPTEMBER 2013

PRESIDING OFFICER: R. SCHALLER

BOARD MEMBER: D. MOORE

BOARD MEMBER: R. KERBER

BETWEEN:

JOHN FUCHS

Complainant

-and-

RED DEER 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:	448051009
MUNICIPAL ADDRESS:	NE 5-38-24-4
ASSESSMENT	\$166,590

[2] Appeared on behalf of the Complainant:

John Fuchs, Owner
Kathleen Fuchs, Owner

[3] Appeared on behalf of the Respondent:

Gert Vande Bunte, Assessor
Karen Bernand, Assessor

JURISDICTION

[4] The Central Alberta Regional Assessment Review Board (hereinafter, "the 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*.

[5] Neither party raised an objection to any Board member hearing the complaint.

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

PRELIMINARY MATTER

[7] **Respondent:** The Respondent stated that the Complainant had not filed any disclosure and that section 5(2) of the *Matters Related to Assessment Complaints Regulation* ('MRAC') provides that "the board must not hear any evidence that was not disclosed...", meaning the Complainant is not able to provide any new evidence at the hearing. The Respondent requested that the Board find that the Complainant had not provided sufficient evidence to warrant proceeding with the hearing.

[8] **Complainant:** The Complainant stated that he had not provided his disclosure evidence by the dates indicated on the Notice of Hearing because he had not understood that he could or should. The Complainant went over several cost items on his County Tax form showing that he paid in taxes a total of \$1,012.02 for the 68.4 acres.

[9] **Board Finding:** The Board issued an oral decision that the hearing would proceed.

[10] Through questions to the parties, it was identified by the Board that the Respondent had not provided the Complainant with any notice that this issue would be brought before the Board. Natural justice requires that each party has the opportunity to fairly develop and state their respective positions. Clearly the Complainant did not have this opportunity upon the Respondent's raising the issue for the first time at the hearing.

[11] The Presiding Officer indicated to the Complainant that the Board is bound by section 5(2) of MRAC and no new evidence would be heard.

BACKGROUND

[12] The subject property consists of 68.4 acres and was assessed as follows:

Farm Land	\$ 8,870
Residential Land	\$148,340
Exemption – 1 st Farm Residence	\$ 4,690
Exemption – Ancillary Bldg Farm Use	<u>\$ 4,690</u>
Total Assessment	\$166,590

[13] As per the above, 65.4 acres were assessed at the regulated rates for farmland. The remaining 3 acres were assessed at market value as per s 4(3)(c) of the Matter Relating to Assessment and Taxation Regulation ("MRAT") which states:

"...the valuation standard for the following property is market value...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."

ISSUES AND FINDINGS

[14] The Board has identified the following issue:

1. Is a portion of the property properly classed as Residential?

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[15] **Complainant:** The Complainant asserted that it was inappropriate to assess his 68.4 property as 65.4 acres farm land and 3 acres as residential because of his personal use of part of the property for limited recreational purposes.

[16] The Complainant presented that he used only a very small portion of the land for recreational purposes and only a few times during the summer. The recreational area consists of: a groomed area (grass cut), a cabin with a porch, two storage sheds (one partially houses recreational items), two children's swing sets and a fenced area. He indicated the building was not serviced with power, water or sewage. The cabin has a glass sliding door and green plastic windows on the front.

[17] This small area was cut into the trees in 1999 and has never been good productive farmland; it has never been farmed or used for residential purposes. The Complainant agreed that family and friends use the area for recreational purposes. The Complainant indicated portions of the cabin and the sheds are used for storing agricultural equipment. There are no other buildings on the property.

[18] Prior to 1999 the property was all assessed as Farm Land. The Complainant did not specify what structures or activities had been or taken place on the property prior to 1999.

[19] The Complainant argued that the recreational area is significantly smaller than the 3 acres that has been classed by the Respondent as Residential. Furthermore, the Respondent's argument that 3 acres must be assessed as Residential because there is a portion of the land that is not used as farm land, makes no sense. The recreational area has never been productive farm land, yet prior to 1999 the entire parcel was assessed as Farm Land.

[20] Lastly, the Complainant argued that the assessment of the Residential Land at \$148,340 was excessive as his land was not worth that much. He also argued that he had purchased the cabin for \$500, whereas the assessment has a value of \$4,690. It is the Complainant's position that the 'market value' shown on the assessment is not representative of what the property is actually worth.

[21] **Respondent:** The Respondent stated that the majority of the 68.4 acres area is used for agricultural purposes; however an area has been set aside and used for recreational purposes.

[22] A large area is groomed and fenced. The area includes a main cabin, a recreational trailer and two storage sheds, which are used for recreational purposes. There is also a covered picnic table with a gravel or concrete pad and chopping block and a pile of firewood. Due to the area being used for other purposes than agriculture a 3 acre area has been assessed at market value since 1999.

[23] The Respondent indicated that under the MGA s 297(1) properties are classified under four classes:

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

and under the MGA s 297 (4)(c) “residential” in respect to property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

[24] The Respondent indicated that under MRAT 4(3)(c) states:

“4 (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...(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”

[25] If a portion of a parcel of land is used for any purpose other than agricultural purposes, it is classified as residential purposes and 3 acres and buildings are assessed at market value. The Respondent indicated the cottage is being assessed but not taxed. The Respondent acknowledged that the main building might contain some farm equipment, but could not be sure since they could not look inside the building. The sheds were used to store recreational items as shown on the photos.

[26] **Board Finding:** The Board finds that a portion of land was used for residential purposes and not farming operations.

[27] Under the MGA 297(4)(a) it states:

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

[28] "Farming operations" is defined in section 1(i) of MRAT as:

"means the raising, production and sale of agricultural products and includes:

- (i) horticulture, aviculture, apiculture and aquaculture,
- (ii) the production of horses, cattle, bison, sheep, swine, goats, fur-bearing animals raised in captivity, domestic cervids within the meaning of the Livestock Industry Diversification Act, and domestic cameids, and
- (iii) the planting, growing and sale of sod"

[29] The Complainant stated that the area was used occasionally for recreational purposes since 1999 and has been used at times during the summer months by family and friends. Once this change in use occurred this area could no longer be considered farmland. Photos provided by the Respondent support the Board decision.

[30] The Board notes that a piece of land can be left as summer fallow for a year or more but will retain its agricultural designation if not used for other purposes, however if a parcel of land has never been used for agricultural purposes as in this case and is used as recreational the area must be assessed as residential according to the regulations.

[31] There is a permanency to the area with all the structures located on the property that lend the property to a Residential classification. The cabin with a deck, although on skids, appears to be permanent. The two storage sheds (one contains recreation equipment), the two play sets equipment and toys, a covered picnic table with a gravel base and chopping block and a large amount of firewood give the area an overall degree of permanency.

[32] Any one of the structures by itself would not necessarily result in a finding that there is a residential use. For example if an area had only a travel trailer that is moved occasionally, then a case may be made that the structure is non-permanent and a different assessment designation could be made. However; in this case it was the totality of the improvements and the degree of permanency that resulted in the Board finding that there was a residential use.

[33] The Board finds the area is used for recreational use on a permanent basis and thus is assessed as residential lands. The smallest parcel as provided by the legislation is 3 acres. Referring to MRAT s 4(3)(c) it states:

4(3)(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.

SUMMARY

[34] The Board finds that the assessment is correct. For the reasons noted above the assessed value of the subject property is CONFIRMED as follows:

Roll # 448051009

\$ 166,590

Dated at the City of Red Deer, in the Province of Alberta this ____ day of October, 2013 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.



Ron Schaller, 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- Hearing Material
2. C1-None presented
3. R1-Submission of Red Deer County

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Decision No.		Roll No.		
<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>