

Central Alberta

Regional Assessment Review Board

Decision: **CARB 0262 676/2015**
Complaint ID 676
Roll No. 8800070

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: July 9, 2015

PRESIDING OFFICER: P. Hageman
BOARD MEMBER: V. Keeler
BOARD MEMBER: R. Schnell

BETWEEN:

LEGACY INC.

Complainant

-and-

CITY OF RED DEER

Respondent

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

ROLL NUMBER: 8800070
MUNICIPAL ADDRESS: SE 36-38-28 W4M, Red Deer, Alberta
ASSESSMENT AMOUNT: \$7,109,100

The complaint was heard by a Composite Assessment Review Board panel on the 9th day of July, 2015, in the Council Chambers at the City of Red Deer, in the province of Alberta.

Appeared on behalf of the Complainant:
Allan Fertig, Property Owner

Appeared on behalf of the Respondent:
Rob Kotchon, City of Red Deer Assessment Coordinator and Analyst

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 3474/2011, *Regional Assessment Review Board Bylaw*.

PROPERTY DESCRIPTION AND BACKGROUND

- [2] The property assessment notice identifies the subject property as vacant agricultural and industrial farmland.

PRELIMINARY MATTERS

- [3] The Board Chair confirmed that no Board Member had any bias with respect to this case.
- [4] Neither party raised any objection to the panel hearing the complaint.
- [5] The Respondent raised a preliminary issue: The Complainant did not provide any disclosure; therefore, the Respondent requested the Board confirm the assessment.
- [6] The Chair advised that as the Complainant had provided no disclosure, the only evidence before the Board is the Complaint Form.

The Board recessed briefly to deal with the preliminary matter.

- [7] After reconvening, and before coming to a decision regarding the matter before it, the Chair asked the parties to provide more details as to the lack of disclosure and any discussions they have had prior to the hearing.

Position of parties on preliminary issue

Complainant's position:

- [8] When asked by the Chair as to why the Complainant had not provided disclosure, the Complainant advised that approximately five years ago, on a previous complaint related to the assessment, he was able to present his case at the hearing without prior disclosure. After the first level of hearing, he had been able to appeal the decision to the Provincial level hearing. He assumed that this was the case in this hearing. He further noted that he is a very busy man and needed to look after his business priorities.
- [9] The Complainant further indicated that the subject property is in transition and that the assessor was fully aware of the situation. The Complainant noted that this is a serious matter as the assessment amount had increased significantly, resulting in a large tax bill.

- [10] When questioned by the Chair if he had been in discussion with the Respondent prior to the hearing, the Complainant confirmed that they had talked; however, he advised that he and the assessor did not agree.
- [11] The Complainant expressed concern about the fairness of the process. He asserted that he was not getting a "fair shake." He felt that this is "simply a \$125,000 mistake."

Respondent's Position

- [12] Rob Kotchon, on behalf of the Respondent, confirmed that he had spoken with the Complainant as far back as November of 2014 when he noticed that the Complainant had stripped the subject property. At that time, he explained to the Complainant the effect on the 2015 assessment.
- [13] The Respondent noted that the Complainant contacted him again in February of 2015 and expressed concerns about the economy. The Complainant wanted to discuss the possibility of a partial or pro-rated assessment. The Respondent explained to the Complainant that the assessment process is mandated by the Provincial Government and outlined in the *Municipal Government Act*; assessments are valued as of July 1st of the assessment year (2014 in this case) taking into account the site condition as of December 31st.
- [14] The Respondent requested the Board confirm the assessment.

BOARD FINDINGS AND DECISION ON PRELIMINARY ISSUE

- [15] The *Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009 [MRAC], s.9(1) states that "a composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form."
- [16] MRAC s.9(2) states that "a composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8." Section 8 refers to the disclosure timelines.
- [17] The Notice of Hearing sent by the City of Red Deer, dated April 29, 2015, advised the Complainant that Complainant evidence needed to be filed with the Clerk by May 26, 2015. The Notice of Hearing further stated, "no new evidence could be introduced at the hearing." The Notice of Hearing further stated that the Board is not permitted to hear any matter that was not identified on the complaint form.
- [18] The Complainant checked off the following matters of appeal: 1) description of the property, 3) assessment amount, 6) type of property, and 7) the type of improvement. The Complainant did not attach any additional information or evidence to the complaint form. The Complainant did not indicate a requested assessment value.
- [19] The Board finds that the Complainant did not provide any disclosure in support of the matters identified on the complaint form.

- [20] The Board finds that the Complainant was not only aware of the dates and requirements for the appeal hearing, but had been through the appeal process several years before.
- [21] The Board finds that the disclosure dates, as outlined in MRAC, allows both parties a fair hearing, whereby one party is not being ambushed by the other party. The process allows both Complainant and Respondent an opportunity to rebut the other party's evidence.
- [22] If there had been exceptional circumstances that prevented the Complainant from preparing adequately for the hearing by the specified hearing date, the Complainant could have requested a postponement. The Board finds that the Complainant did not request a postponement.
- [23] The onus is on the Complainant to prove that an assessment is incorrect, as well as what the correct assessment should be. The Board finds that by failing to provide evidence in support of the matters of appeal, the Complainant failed to meet the burden of proof.

DECISION SUMMARY

- [24] The Board dismisses the complaint and confirms the assessment of the subject property at \$7,109,100.
- [25] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta, this 14th 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.



Petra Hagemann
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" – Legislation References

MGA s 460(1&7) Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(7) A complainant must

- (a) indicate what information shown on an assessment notice or tax notice is incorrect,
- (b) explain in what respect that information is incorrect,
- (c) indicate what the correct information is, and
- (d) identify the requested assessed value, if the complaint relates to an assessment.

MGA s 467(1-3) Decisions of assessment review board

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

MRAC s 8(1) and s9(1&2) Disclosure of evidence

8(1) In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 42 days before the hearing date,
 - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;
- (b) the respondent must, at least 14 days before the hearing date,
 - (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;
- (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause
 - (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Failure to disclose

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

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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>
CARB				