

Central Alberta

Regional Assessment Review Board

CARB 0262-703/2016

Complaint ID 703

Roll No. 30009700630

COMPOSITE ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: July 28, 2016

ADJOURNED HEARING DATE: October 6, 2016

PRESIDING OFFICER: B. Hisey

BOARD MEMBER: A. Gamble

BOARD MEMBER: A. Knight

BETWEEN:

R&S RESOURCES LTD. – TERROCO INDUSTRIES LTD.

Complainant

-and-

CITY OF RED DEER

Revenue & Assessment Services

Respondent

This decision pertains to a property assessment 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: 30009700630

MUNICIPAL ADDRESS: 27212 TWP Rd 391, Red Deer, Alberta

ASSESSMENT AMOUNT: \$6,326,170

The complaint was heard by the Composite Assessment Review Board on the 28th day of July, 2016, at The City of Red Deer, in the province of Alberta, and was adjourned to the 6th day of October, 2016, at the same location.

Appeared on behalf of the Complainant:

Terry O'Connor – Owner of the subject property

Lavinia Olar – Legal assistant

John Amundson – President of Terroco Industries

Kevin Jones – General Manager at 2A Technology

David Horn – President of Truepoint Appraisals

Chris Forgues - Solicitor

Appeared on behalf of the Respondent:

Jason Miller – Property Assessor

Anna Meckling – Assessment Coordinator & 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 subject is a non-residential property located at 27212 Township Road 391, within Red Deer, Alberta. It entails an industrial facility, with numerous improvements, situated on 17.9 acres of land zoned I1-Industrial (Business Service) District.
- [3] Terroco Industries Ltd. submitted a complaint to the Regional Assessment Review Board on March 18, 2016, and checked box #3 on the complaint form, indicating that the complaint regarded an assessment amount.

PRELIMINARY MATTERS

- [4] The Board Chair confirmed that no Board member raised any conflicts of interest with regard to matters before them.
- [5] Neither party raised any objection to the panel hearing the complaint.

Preliminary Matter #1

- [6] A preliminary matter was identified by the Chair for clarification regarding the submission of two roll numbers (the subject property with roll 30009700630, and a 2nd property with roll 30009700635 known as Quality Tubing Canada Inc.), both disclosed in one document package and intended for one hearing.
- [7] After questioning both parties, the Board understood that although the properties had clear differences, the assessment reduction for Quality Tubing Canada Inc. was contingent on the same evidence and argument as the subject property. Both properties are owned by R & S Resources Ltd. It was also noted that the inconvenience to postpone the hearing and reconvene after all the documentation was separated would be onerous on all witnesses and parties present.
- [8] The Board recessed to deliberate and confirmed the process could be managed to accommodate both parties. It was confirmed that evidence and argument would be provided on both properties at one hearing, but would be written as two separate decisions. This decision pertains to the subject property, Terroco Industries Ltd.

Preliminary Matter #2

- [9] A second preliminary matter was brought forward by the Respondent regarding appropriate disclosure on the land value component for the subject property. The

Respondent stated that the Complainant did not indicate that the land value was under appeal, and therefore this matter could not be brought as new evidence by the Complainant in Rebuttal documents or verbal testimony. Both parties spoke to this matter:

- a. The Respondent referred to *Matters Relating to Assessment Complaints Regulation, AR 310/2009* ["MRAC"] section 8.2 to request that portions of the Rebuttal document be removed from evidence, stating it did not respond to the documents provided by the Respondent. It was suggested that the information was intended to pad the Complainant's initial disclosure.
- b. The Complainant stated the rebuttal information was to support the Howard & Company appraisal in the original disclosure. It was also provided in response to discussions with the City regarding the sale of the property adjacent to the subject.

[10] The Board recessed to deliberate, then reconvened to declare the Rebuttal documents were not properly disclosed as required by MRAC 8(2)(a), and that new evidence could not be accepted under MRAC 9(2). The Rebuttal document was entered as Exhibit CR.1 with 7 pages (the remaining 8 – 16 pages were struck from the document).

Preliminary Matter #3

[11] The third preliminary matter presented by the Respondent questioned the admissibility of new evidence through verbal testimony of witnesses not listed as agents within the disclosure documents. The witness sheet was reviewed by the Board, and clarification was provided regarding information that would be accepted under *Matters Relating to Assessment and Taxation Regulation, Alta Reg 220/2004* ["MRAT"], section 8(2)(a)(i).

[12] The Respondent requested confirmation that disclosure regulations would be followed in regards to information provided by the Complainant. There was no abridgment of time granted for additional information regarding land sales by the Respondent.

[13] The Board determined that verbal testimony would be heard from witnesses that had been identified in the disclosure package. It was clarified that Mr. David Horne was representing Howard & Company.

[14] The Board confirmed the disclosure submissions and presented the parties with the following chart outlining the Exhibits as follows:

C.1 *Witness Report, 1 page*

C.2 *Complainant Disclosure exhibits 1-12, letter dated June 13, 2016, 2 pages*

(1) *Appraisal Report from Howard & Company conducted by Mr. David Horn, 76 pages*

(2) *City of Red Deer 2015 tax assessment details for both properties, 12 pages*

(3) *Alberta Land Compensation Board Decision, 16 pages*

(4) *R&S Resource Services – Tax Amounts Chart, 1 page*

(5) *R&S Resource Services – Property Valuations Chart, 1 page*

- (6) *Bylaw 3554/2015 – 11A MASP Figures (x4), 4 pages*
 - (7) *Utility Bylaw 3570/2016 – Schedules, 17 pages*
 - (8) *Letter–Petroleum Tank Management Association (March 9, 2016, 5 pages*
 - (9) *Witness Report – Table of Contents & Witness Report, 10 pages*
 - (10) *Witness Report – Tubing Technology Canada – Terry O’Connor, 5 pages*
 - (11) *Witness Report – Summary Letter dated June 10, 2016, D. Horn, 2 pages*
 - (12) *Relevant Case Law – Summary and Excerpts (5 pages) + excerpt from MGA part 9 (4 pages) + excerpt starting at MGA 298 (5 pages) + costs to be excluded – Ministerial Order (2 pages) = 16 pages*
 - (12.1) *CARB 0262/2015, 24 pages*
 - (12.2) *CARB 0262 670/2015, 23 pages*
 - (12.3) *CARB 0262 673/2015, 23 pages*
- TOTAL PAGES (C.2)...237 pages*

C.3 *Complainant Witness Report*

Exhibits 1-20 Cover Page – List of Exhibits numbered 1-20

- (1) *Red Deer Storage Facility Tank List, 6 pages*
- (2) *Red Deer Storage Facility Tank List – Original Schedule, 1 page*
- (3) *Storage Facility Cost in 2007, 3 pages*
- (4) *Storage Tank Facility Depreciation Schedule, 1 page*
- (5) *Storage Tank Facility Invoices, 33 pages*
- (6) *Storage Facility Pad – Depreciation Schedule, 1 page*
- (7) *PTMAA Correspondence – dated March 9, 2016, 1 page*
- (8) *Terroco - IT Technical Narrative Report, 2 pages*
- (9) *Terroco - Bottled Water Costs, 3 pages*
- (10) *Bottled Water Invoices, 79 pages*
- (11) *Terroco – Commercial Water Usage (2013 & 2014), 2 pages*
- (12) *Commercial Water Invoices, 124 pages*
- (13) *Gallagher Water Protection Correspondence, 1 page*
- (14) *Gallagher Insurance Premium Correspondence, 1 page*
- (15) *Terroco – Septic Removal Costs, 1 page*
- (16) *Clearwater Waste Management Ltd. – Septic Removal Invoices, 40 pages*
- (17) *Directions to Terroco, 2 pages*
- (18) *Annual Property Taxes – spreadsheet, 1 page*

(19) *Tax Assessments, 30 pages*

(20) *3rd Party Email & Attachment, 3 pages*

TOTAL PAGES (C.3)...336 pages

CR.1 *Complainant Rebuttal - Rebuttal of Evidence (see preliminary matters paragraph 8), 7 pages*

R1 *Respondent Disclosure - Disclosure of Evidence for Terroco Industries and Quality Tubing, 227 pages*

ISSUES

- [15] The Board considered the parties' positions and determined the following questions are to be addressed within this decision:
- a) Has the subject property been properly assessed at market value?
 - b) Have the improvements to the subject property been properly valued?
 - c) Is the cost approach the correct method of valuating the property?

POSITION OF THE PARTIES

Position of the Complainant

- [16] This complaint was filed on the basis of an appraisal by Howard & Company that provided a market value estimate of \$5,500,000 for the subject property. The land value was listed as \$3,200,000, with improvements estimated at \$2,300,000. The City of Red Deer has assessed the land portion of the subject property at \$2,738,700 with improvements of \$3,597,470 for a total current assessment of \$6,336,170.
- [17] The Complainant requested the City land value of \$2,738,700 be used in conjunction with the improvement calculation from the Howard & Company appraisal estimated at \$2,300,000. The requested revised 2016 annual assessment is \$5,038,700.
- [18] The Complainant had several witnesses present various components of the disclosure to the Board. Each witness provided evidence followed by questions from the Respondent and the Board.

Complainant Witness – Mr. David Horne (President of Truepoint Appraisals – representing Howard & Company)

- [19] Mr. David Horne was the author of the appraisal provided by Howard & Company for the Terroco Industries property (27212 TWNR 391). The document used an effective date of July 1, 2015 for the subject property, which reported an estimated market value of \$5,500,000 dollars.
- [20] Mr. Horne outlined the three approaches to value: cost, direct comparison sales, and income approach.

1. The cost approach established a value of \$5,700,000 (\$3,200,000 land, plus improvements at \$1,850,135 and site improvements of \$560,000).
2. The income approach applied hypothetical leases for potential lessees. Next, typical market expenses and operating costs were used to derive a net capitalization rate of 7%. The income approach calculation was \$5,500,000 for the subject property.
3. The last method applied to the subject property was the direct comparison approach. Using the same comparables (provided for the income approach) a market value of \$5,500,000 was established.

[21] On behalf of Howard & Company, Mr. Horne concluded that based on the merits and shortcomings of each approach, a market value of \$5,500,000 should be established for the subject property.

[22] Upon questioning from the Respondent, Mr. Horne was unable to provide a list of detailed improvements from the evaluation. The list was summarized but not comprehensive, and several items such as the relocatable office, fuel tanks, and dispensers were not detailed or available in the documentation.

[23] The Respondent also questioned the site coverage for typical warehouse facilities (15 – 25%), versus the subject property at 4.8% and spoke to the excess of surplus lands available but not listed as an asset.

[24] The similarity of the comparables used in the appraisal was also discussed and reviewed by the Complainant during questioning from the Respondent. It was acknowledged that there were limited comparables (used in both the cap rate comparables and the income approach information) but adjustments had been made to offer upward or downward corrections for any differences. No evidence of the adjustments was presented or available.

Complainant Witness – Mr. John Amundson (President of Terroco Industries)

[25] Mr. John Amundson, President of Terroco Industries, presented Exhibit C.2 (9) regarding the business history, operation and equipment for the facility.

[26] Building improvements were reviewed along with replacement costs and insurance valuations in support of a reduction to the valuation.

[27] Mr. Amundson detailed the licensing required for the tanks; some were set to expire in August of 2017. Costs initially paid for these structures were provided to the Board. Information was presented that suggested these structures could essentially be disconnected from use, and were not permanently installed.

[28] Mr. Amundson reviewed the significant impacts of the subject property having no connection to water or sewer. Although the parcel was annexed in 2009 there have been no additional services provided to the site.

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- [29] The lack of internet services to the property was reviewed (there is no Telus or Shaw services to the site).
- [30] The Board also heard how difficult it was to access the subject property, and how much the taxes have increased over the years.
- [31] Mr. Amundson suggested there was a significant difference in opinion over the evaluation of the tank farm. Although the province has a standard valuation for some of these types of improvements, the Board was advised that if there is no future licensing, the tanks are worth very little. Original purchase invoices were provided for these items.
- [32] In closing Mr. Amundsen stated the company was not in an enviable position, located in the City with increased expenses during a challenging economic climate.

Complainant Witness – Kevin Jones, (General Manager at 2A Technology – specific to roll 30009700635)

- [33] Mr. Kevin Jones, General Manager at 2A Technology provided a presentation regarding Quality Tubing Canada, roll 30009700635. This document supported the locational issues for the subject property (i.e. Inadequate access, lack of services), as well as the contention of an incorrect application of the machinery and equipment assessment.

Complainant Witness – Terry O'Connor (Owner)

- [34] Mr. Terry O'Connor presented an overview of the disclosure documents to the Board, outlining incorrect items listed on the City's assessment, such as year built for the on-site improvements. Details regarding construction standards, use, and services were also provided to the Board.
- [35] The buildings contained within the complex were reviewed in detail. The sandblasting shed encompasses 6 containers with a roof, no water connection, no power, and no services. The metal open storage warehouse, shown as \$235,000 in the assessment, has no floor and no services; just storage containers with a roof on it. The paint booth is part of the larger building, built in 1993, and is simply one building under the same roof. The caretaker residence was assessed at \$49,000, and had no specific appraisal. The relocatable office was appraised at \$67,000 which, according to Mr. O'Connor, also seemed high and probably worth \$47,000.
- [36] Mr. O'Connor moved on to describe the blending tanks and the government legislation that covered these items. It was noted that the tanks were incorrectly taxed, as they are for manufacturing and processing. Further statements were made regarding the value, number and depreciation for these tanks.
- [37] In closing, the Complainant questioned the valuation dates and details of the cost approach calculations. It was noted that the assessment legislation was very complicated.

Position of the Respondent

- [38] The Respondent described the legislative requirements for valuation of the subject property and reviewed the assessment details. Summary reports were provided describing

specific components with Marshall & Swift costing manual values. The subject has been assessed using the cost approach to value.

- [39] The Respondent stated that the cost approach was deemed to be the most reasonable valuation method due to the variety of existing improvements and large parcel size. The steps involved to determine market value for this method were reviewed with the Board. A further cross reference to several other industry accepted cost guides was provided in support of the replacement and depreciation costs.
- [40] Information and photographs of the improvements on the subject property were provided to the Board along with location and aerial maps.
- [41] A comparison chart was presented by the Respondent outlining the assessment versus the complaint summary of replacement cost new for improvements located on the subject property. The Respondent did not include the Howard & Company appraisal, as they stated that there was no justification or support for the estimates on multiple improvements. From this comparison, the Respondent suggested it was noteworthy that the total replacement costs utilized by both the City and the Complainant were consistent.
- [42] The Respondent reviewed the Complainant's suggestion that the tank farm was not assessable. Legislation was provided to clarify the definitions, and past Composite Assessment Review Board decisions were supplied, showing validation for the assessment of the tank farm.
- [43] The Respondent went on to criticize the Complainant's appraisal, noting incorrect site coverage ratio missing improvements and excessive depreciation. It was also the Respondent's contention that inadequate consideration had been applied for the land component of the subject property, and noted the poor sales comparables that had not been adequately adjusted for inferior or superior comparisons.
- [44] In closing, the Respondent requested that the Board confirm the subject property assessment at \$6,326,170.

BOARD FINDINGS & DECISION

- [45] The Board determines the sales comparables from the Howard & Company appraisal report are not similar to the subject property. As agreed by both parties, there were limited sales of large industrial sites. However, the number of adjustments required, including parcel size, building ratio, structure type and condition, were so sufficiently different to the subject property that any analysis (direct comparison or income approach) would not be reliable. Therefore, the Board finds the cost approach to be the most appropriate method to determine market value.
- [46] Although a large portion of the evidence provided by the Complainant relates to concerns regarding locational influences, including services, accessibility, telecommunication availability, etc., the Board finds these items are reflected within the land valuation step of the cost approach. It is also acknowledged that the Complainant offers evidence within the appraisal for the subject lands that the assessed land value is appropriate.

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- [47] As the Complainant did not initially challenge the land component of the assessment in the formal complaint form, the outstanding issue to be considered by the Board is the improvement valuation.
- [48] The Board acknowledges the subject's improvements to be diverse and complex, making adjustments difficult to quantify and qualify. However, several findings were established regarding the improvements for the subject property.
- [49] The Board finds the tank farm, which the Complainant acknowledges as storage, is taxable. As described in *Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004, section 1(j) describes non-assessable machinery and equipment, but specifically excludes tanks used for storage.
- [50] The assessed values of the tanks are taken from Marshall & Swift, which is greater than what the Complainant paid for these items in 2007. It is recognized that replacement costs minus the depreciation may render the tanks valued at more than the original cost. It was also noted that within disclosure R1 Exhibit F, 2014, emails from the Complainant suggested the value of the tanks to be over \$620,000. The Board is not convinced the tank farm assessment could be reduced, as there was no evidence that specifically details the current values or recertification costs.
- [51] Further, the Board recognizes that the Complainant said there were some tanks used for blending that should be assessed as machinery and equipment. However, no evidence was introduced to identify the tanks, their numbers, locations, values, etc. attributed to them. The board heard no further discussion and has not addressed this further.
- [52] The Complainant suggested incorrect construction information was used for several buildings located on the property. The Board recognizes the year built for buildings located within the facility to be the construction year, and the effective year built (effective age) is the chronological age with an adjustment to reflect an addition or significant renovation that extends the improvement's remaining economic life. The Board accepts the effective year built provided by the Respondent for the structures within the complex.
- [53] An assessed value may be calculated using any of the three valuation methods. However it must provide a reasonable estimate of market value, which is the end objective. The Complainant did not convince the Board that applying the land component from one analysis along with improvement calculations from another source would result in a correct valuation.
- [54] Section 467(3) of the *Municipal Government Act*, RSA 2000, c M-26 states that an assessment review board must not alter any assessment that is fair and equitable. Proving the incorrectness of an assessment is the responsibility of the individual alleging it. The Board was not presented with sufficiently compelling evidence on which a change to the assessment could be based.

DECISION SUMMARY

- [55] The Board finds that the Respondent values are confirmed.

[56] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 7th day of November, 2016 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.



Brenda Hisey
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.

APPENDIX

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		(4) R&S Resource Services – Tax Amounts Chart	1
		(5) R&S Resource Services – Property Valuations Chart	1
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		(7) Utility Bylaw 3570/2016 - Schedules	17
		(8) Letter–Petroleum Tank Management Association (March 9, 2016)	5
	Witness Report & Document	(9) Witness Report – Table of Contents & Witness Report (1 cover page + 9 page document with 18 items = 10 pages)	10
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