

# Central Alberta

Regional Assessment Review Board

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Decision: LARB 0254 568-572/ 2013  
Complaint ID: 568-572  
Roll: 303100, 4101125, 410120, 410115, 410110

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LOCAL ASSESSMENT REVIEW BOARD DECISION  
HEARING DATE: OCTOBER 3, 2013

PRESIDING OFFICER: A GAMBLE  
BOARD MEMBER: R KERBER  
BOARD MEMBER: K STECKLER

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BETWEEN:

BEN MEYER

Complainant

-and-

TOWN OF PONOKA

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:	303100, 410125, 410120, 410115, 410110
MUNICIPAL ADDRESS:	3719-46 Ave., 4205-38 St., 4207-38 St., 4209-38 St., 4211-38 St.
ASSESSMENT:	\$305,910., \$70,430., \$70,430., \$70,430., \$75,890.

[2] The complaint was heard by the Local Assessment Review Board on the 3<sup>rd</sup> day of October 2013, in the City of Red Deer.

[3] Appeared on behalf of the Complainant:

Nick Kohlman, Agent  
Bill Kuncio, Agent

[4] Appeared on behalf of the Respondent:

Calvin McArthur, Assessor  
Paul Govenlock, Solicitor  
Betty Quinlan, Town of Ponoka  
Val Schabert, Town of Ponoka

### **JURISDICTION**

[5] 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").

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

[7] Due to the similarities of the complaints the parties agreed to consolidate all five Complainants into one hearing.

### **PRELIMINARY MATTER**

[8] **Respondent:** The Respondent stated that the Board had no jurisdiction to make decisions on the Local Improvement Tax (LIT) and how it is calculated, since this is the local authority's jurisdiction. Secondly, the issue of the Complainant appealing the LIT was decided at a previous hearing, where the Board found that the Complainant had missed the filing deadline and the complaint was dismissed.

[9] **Complainant:** The Complainant stated that they were very aware of the Board's previous decision and that the arguments they were bringing forward today relate to the impact the LIT has had on the subject properties' market values.

[10] **Board Finding:** The Board found that it does not have the authority to question the amount of the LIT or how it was implemented, however the issue of how the LIT affects the market value of a property is within the Boards jurisdiction.

[11] The Board issued an oral decision that the hearing would proceed. The Board has the jurisdiction to rule on assessment issues.

### **BACKGROUND**

[12] The subject property originally consisted of a 5 acre parcel which was part of a farm site located in the County of Ponoka. The Town of Ponoka (Town) annexed the area and the owner subsequently subdivided the parcel into five separate parcels: four lots fronting on 38 St and a larger 4 acre parcel abutting on the back of the four subdivided lots. The larger parcel is a pastured area with two farm buildings.

[13] The Town has assessed the five properties; however, the assessments assumed all the buildings were on the four acre parcel. This error was identified by the Respondent who put forward to the Board recommended assessments for each of the properties:

Lot Number	Address	Old Assessment	New Assessment	Remarks
Lot 1	4211 – 38 St	\$75,890.00	\$180,190.00	Corner Lot with residential House
Lot 2	4209 – 38 St	\$70,430.00	\$72,280.00	Currently classified as vacant lot; Garage on lot
Lot 3	4207 – 38 St.	\$70,290.00	\$67,290.00	Vacant Residential Lot
Lot 4	4205 – 38 St.	\$70,290.00	\$67,290.00	Vacant Residential Lot
Lot 5	3719 – 46 Ave.	\$305,910.00	\$148,010.00	Two out buildings, fenced and serves as a pasture at times

[14] Lot 5 has an assessment of \$305,910.00 and no LIT. The Complainant is disputing the classification of “residential”, as he feels the correct classification is “farm land”.

[15] Lot 5 was assessed at market value as per section 4(3)(c) of the Matter Relating to Assessment and Taxes Regulation (“MRAT”) which states:

“...the valuation standard for the following properties is market value...(c) an area of 3 acres located on a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes”

[16] Lot 1, on which the farmhouse is located, is classed as Residential Vacant Land with a property assessment of \$75,890.00 and a LIT of \$1607.55. Lots 1, 2, 3 and 4 front onto 38 St.

[17] The Complainant feels the LIT affects the market value of these properties, and consequently, the salability of the four lots fronting on to 38 St. would be affected.

## **ISSUES AND FINDINGS**

[18] **The Board has identified the following issues:**

1. Has Lot 5 been properly classed as “residential”?
2. Has the impact of the local improvement tax been properly accounted for in the assessed value on the four lots fronting on 38 St?

### **1. Has Lot 5 been properly classed as “residential”?**

[19] **Complainant:** The Complainant submitted pictures taken this year of horses being pastured on the 4 acre parcel. The horses can only be pastured later in the year and only for a

few months when the grass is available. The horses may not have been present at time if the municipal inspection. The owner did indicate that there was usually no activity other than when horses may be brought in if pasture was adequate. In response to the Respondent's argument that the property owner had indicated that there was "no activity" on this parcel, the Complainant argued that the property owner had not understood that pasturing would be considered an activity.

[20] **Respondent:** The Respondent indicated that he spoke with the owner who stated there was no activity on this 4 acre parcel. The Respondent further advised that the parcel does not meet the legislative requirement for "farming operation". MRAT section 1(i) states:

"farming operations" 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 camelids, and
- (iii) the planting, growing and sale of sod.

[21] The available records indicate that this property has not been assessed as "farmland" for the last 20 plus years. The Respondent noted section 289(2) of the MGA states:

"Each assessment must reflect:

- (a) the characteristic and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property; and
- (b) the valuation and other standards set out in the regulations a for that property."

[22] The respondent also reiterated under the MGA section 297(1) that:

"When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

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

[23] **Board Finding:** The Board finds that the area is not used as "farmland" as defined in the MGA and the regulations and therefore finds the classification as "residential" correct.

[24] The definition of 'farming operations' in MRAC is very specific and unfortunately, neither party presented any evidence relative to the use of the land during the valuation period (July 1, 2011 to July 1, 2012). All information provided, including the pictures presented by the Complainant, was dated as 2013.

**2. Has the impact of the LIT been accounted for in the assessments of the four lots fronting onto 38 St.?**

[25] **Complainant:** The Complainant indicated that four of the five properties are impacted by the LIT placed on the properties in the development of 38 St. In preparing the assessments of the lots, which only water and sewer, they were compared to serviced lots.

[26] Only 20% of the LIT has been paid at this time, the remaining LIT will be paid by the owners of the lots over the next twenty years. For Lot 1 (72 foot frontage corner lot) the total cost is \$25,720 (prorated over 20 years plus interest). At this time, 4 years have been paid. The Town activated a similar agreement for the other three lots, although the total tax is lower due to smaller frontage.

[27] The owner was permitted to pay an additional \$5,000 for sewer and water connections to the property line. However; the Town also included other private connections (contrary to MGA), thus increasing the costs to the owner (C1 pg. 21). The cost to the developer was \$6,400 per lot for a service line to one lot or a total of \$32,000. This is an overcharge that impacts the market value of the subject properties. It is the Complainant's position that the poor implementation of the LIT renders the lots unsalable.

[28] There are still numerous improvements that need to be made and paid for including sidewalks, curb and gutter, lighting and pavement, which may impact the market value of the lots. All future improvements can only be done through a local improvement tax, which means the owners will have no control over costs?

[29] The owner has Deferred Service Agreement with the Town, which allow the registering of the lots. In response to the Respondent's assertion that the property owner was going to list the lots for sale at \$75,000, the Complainant argued that the property owner is not a developer and that serviced lots are selling for \$75,000. It does not make sense to attempt to sell un-serviced lots for the same price.

[30] The Complainant asserted that the Town admitted that there were overcharges to the LIT (C1, pg. 6) which partially states: "...a refund the project for a total of \$56,700..." The Complainant stated this amount was only a 1/3 of what it should be. The inappropriate actions of the Town have resulted in mistrust between the parties.

[31] The Complainant indicated that the Town's unwillingness to adequately address the LIT issues also impacts the market value of the properties. The Complainant indicated that the market value is zero; however, acknowledged that a zero assessment is unreasonable and stated that he was leaving it up to the Board to determine a value.

[32] **Respondent:** The Respondent believed that when the properties were subdivided all of the buildings were located on the 4 acre parcel (Lot 5). Upon a detailed inspection of the properties several errors in the assessment were found and therefore recommended assessments are being presented to the Board (see paragraph 13).

[33] The land portion of the assessments have been reduced by 4.5% to reflect fair market value based on sales data due to "location and utility".

[34] The Respondent presented a chart showing the Assessment to Sales Ratio (ASR) for acreages in the Ponoka area were at 88%. An ASR shows an assessment as a percentage of the sale price. The legislation requires that an ASR be between 95% to 105%. The Respondent stated that despite the fact that the ASRs for acreages in Ponoka are low, there are not enough sales to support an increase.

[35] The Respondent showed further data relative to single family property sales of four sales and sales value of \$180,600 compared to the assessment of \$180,000.

[36] In regard to vacant serviced lots, four lots sales show a value of \$73,100 compared to the assessment of \$72,280. The range of values for vacant serviced lots is \$66,000 to \$75,000. In response to the Complainants argument that there is still a significant cost to install services the Respondent indicated that vacant un-serviced lots have a recapture rate.

[37] The Respondent showed that vacant lands in the Town have an ASR of 99% with an average assessment of \$74,959.

[38] The Respondent indicated that single family properties show an average sale price to be \$221,592.

[39] The Respondent indicated that over the last four years market value has decreased in the Town by approximately 1- 2% per year.

[40] **Board Finding:** the Board finds that it is reasonable to conclude that the LIT issues would be a factor that an informed buyer would consider in evaluating the purchase of the subject lots. The deferred expenses would be another factor that an informed buyer would consider. However, section 460 (7) of the MGA states that the 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 respected assessed value, if the complaint relates to an assessment.

[41] This means that even if the Complainant has been able to show that the LIT issues affect the market value of the subject properties (items (a) and (b) above), it still remains the Complainants burden to provide sufficient evidence to establish how much these issues affect the market, perhaps by way of an appraisal, professional opinion or some other market evidence (items (c) and (d) above). Without any evidence to the contrary, the Board finds that impact of the LIT has been accounted for in the assessments of the four lots fronting onto 38 St.

[42] The Board, through questioning both the Complainant and Respondent, confirmed that the four lots are serviced with power, gas, water and sewer services to the property line. Additionally, both parties agreed that the lots are not provided at this time with storm sewer, monolithic sidewalks, curbs and gutter or pavement.

[43] While the Board agrees with the Complainant that un-serviced lots are not directly comparable to serviced lots, the subject lots do in fact have some services. And again, unfortunately, no evidence was provided as to what affect the lack of storm sewer, monolithic sidewalks, curbs and gutter or pavement have on market value.

[44] In considering the recommended assessments put forward by the Respondent the Board notes that the Complainant confirmed that the recommended assessments reflect the proper allocation of the buildings.

[45] In the absence of any evidence to the contrary the Board finds that the recommended assessments to be correct.

### **SUMMARY**

[46] For the reasons noted above the assessed values of the subject properties are VARIED as follows:

Roll # 410110 from \$75,890 to \$180,190. House situated on property  
Roll # 410115 from \$70,430 to \$72,280. Garage situated on property  
Roll # 410120 from \$70,290 to \$67,290. Vacant Lot  
Roll # 410125 from \$70,290 to \$67,290. Vacant Lot  
Roll # 303100 from \$305,910 to \$148,010. Two Out Buildings on property

Dated at the City of Red Deer, in the Province of Alberta this 1<sup>st</sup> day of November, 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.



S. Parsons on behalf of  
A. Gamble, 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 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](http://www.albertacourts.ab.ca).**

APPENDIX "A"

Documents Presented at the Hearing  
and considered by the Board

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NO.

ITEM

1. A1 – Hearing Material for 9:00 AM Meeting
2. A2 – Hearing Material for 1:00 PM Meeting
3. C1 – Material Exchange for Meyer Complaint
4. C2 – Rebuttal to the Towns Argument of Sept 25, 2013
5. R1 – Meyer v Town of Ponoka Complaints 568 – 572
6. R2 – Local Assessment Review Board Hearing Calvin McArthur Presentation