

**KNEEHILL COUNTY  
COMPOSITE ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

**between:**

***James Berry - Owner, COMPLAINANT***

**and**

***Kneehill County, RESPONDENT***

**before:**

***Board Chair, PRESIDING OFFICER***

***Ken Hoppins, MEMBER***

***Ron Willson, MEMBER***

This is a complaint to Kneehill County Assessment Review Board in respect of Property assessment prepared by the Assessor of Kneehill County and entered in the 2010 Assessment Roll as follows:

**ROLL NUMBER: 32263447850, Plan: 0010618, Block 8, Lot 22**

**LOCATION ADDRESS: 110 – 2<sup>nd</sup> Avenue North Torrington, Alberta**

**HEARING NUMBER:**

**ASSESSMENT: \$458,420**

This complaint was heard on the 13 day of October, 2010 at the Kneehill County Council Chambers, 232 Main Street, Three Hills, Alberta.

Appearing on behalf of the Complainant:

- *Mr. J. Berry - Owner*

Appeared on behalf of the Respondent:

- *Mr. F. Grills - Assessor*

Attending: ARB Clerk, Mr. M. Morton and assisting, Ms. L. Watt

### **Preliminary Matter - Disclosure of Evidence**

At the beginning of the Respondent's presentation the Complainant indicated that no disclosure of the Respondent's evidence had been received. The CARB recessed to allow the parties to investigate this matter. Upon reconvening, the Complainant indicated that after reviewing the materials the Assessor intended to present, that he was willing to proceed with the hearing. The CARB reviewed the options of providing more time for the Complainant to consider the Respondent's evidence or abridge the disclosure time set out in section 8 (1)(d) of the Matters Relating to Assessment Complainants Regulation (MRAC). The Complainant agreed to abridge the disclosure time for the Respondent and the hearing proceeded.

### **Property Description and Background:**

The subject property is the old Torrington school. The 50 year old concrete block gymnasium of 5918 sq. ft. had been used as a welding shop in recent years, however the balance of the building of 1105 sq. ft. had not been occupied for some time and renovations had begun to convert this old classroom section, which is a wood structure, into motel style living quarters. The valuation date for assessment purposes is July 1, 2009, however the property was sold through a judicial sale to Mr. Berry in March 2010 for a sum of \$110,000 and therefore the new owner is responsible for the 2010 property taxes. The dispute in this case centres on what the correct market value for the subject property should be as of July 1, 2009.

The CARB has carefully considered all of the evidence and arguments advanced by the parties; however this decision will only make reference to the evidence and argument which the Board found to be most significant.

### **Issue:**

What is the best estimate of the subject property's market value as of July 1, 2009 considering its physical condition as of December 31, 2009?

### **Board's Findings with Respect to the Issue in Dispute:**

The value of \$220,000 as determined by Perry Appraisal Associations Ltd. as of April 23, 2009, is the best indicator of value for the subject property.

### **Summary of Party's Positions**

#### **Complainant**

The Complainant first inspected the subject property in early January 2010. The Complainant stated

that it was obvious at that point that the roof in the wooden structure section of the building had been leaking for some time and black mold was noticeable from both the odour and appearance of the interior. The Real Estate firm representing the property provided the Complainant with an appraisal that had been done on the subject property as of April 23, 2009 by Perry Appraisal Associations Ltd. This appraisal does not mention the presence of black mold and the Complainant's view is that black mold does not appear overnight and was likely present at the date of the appraisal, but in any case, it was definitely present at the time of his inspection in January 2010. The Complainant indicated that it was this fact that led him to offer \$110,000 for the property. The 1105 sq. ft. wood structure section has since been demolished at a cost of \$44,100. Based on the purchase price and the additional costs associated with the costs to demolish the old wooden structure, the Complainant recommended that a fair value for the assessment as of July 1, 2009 would be \$175,000.

### **Respondent**

The Respondent indicated that it had no knowledge of the appraisal of the subject property when the assessment was set for the subject property. The Assessor stated that he had not been able to access the property prior to developing the 2010 assessment, however relying on an inspection of the property in 2008, renovations were underway and framing of partitions had been done at that time. The assessment must recognize the fact that as of July 1, 2009 the structure was in place and under renovation. The value of improvements has been done using the Marshall and Swift cost model and after depreciation and allowances the value of improvements is at only 24%. The Respondent argued that the sale of the subject in March of 2010 is not relevant as it is a duress sale, it is post-facto and not reflective of the property's value on July 1, 2009 considering its condition as of December 31, 2009. In the County of Kneehill there are little to no market comparables and therefore the Assessor must rely on the cost approach to value which was used in this case. The Respondent suggested that the correct market value is at some point between the Appraised value of \$220,000 and the assessed value of \$458,420 and he would leave it to the CARB to decide

.

### **Findings and Reasons:**

The CARB is concerned that the Assessor's information about the condition of the subject improvement dated back to 2008, especially since it was known that the property was undergoing renovations and still had not been occupied when the Assessor attempted to view the building in preparation for the 2010 assessment. Section 294 of the Municipal Government Act (Act) provides for the right of the Assessor to access properties after given reasonable notice to the owner or occupant. In this case, the CARB heard that no one was on site at the time the Assessor stopped in to view the improvements, and therefore, only an exterior inspection was possible. The fact that the Assessor did not have knowledge of the appraisal done by Perry Appraisal Associations Ltd. is not a persuasive reason to have the CARB dismiss this evidence. The CARB has found that the appraisal is in fact the best evidence of value for the subject property in this case given the dated nature of the information available to the Assessor. The CARB agrees with the Assessor that the post-facto judicial sale of the subject in 2010 is not a reliable indicator of the subject's market value as of July 1, 2009. While the CARB accepts that the black mold issue may have been present when the Complainant inspected the property in January 2010 there is no empirical evidence as to the extent

of this problem on December 31, 2009. The CARB must be guided by the best evidence of value as of July 1, 2009 given what is factual about the property's condition on December 31, 2009.

### Decision Summary

Based on a careful review of all of the evidence provided by the parties and the findings above, the CARB has decided to set value for the 2010 Assessment of the subject property at \$220,000.

It is so ordered.

Dated this 10<sup>th</sup> day of November 2010.



---

**Paul G. Petry**  
**Presiding Officer**

**An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:**

**470(1)** *An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

**470(2)** *Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

**470(3)** *An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*

(b) *any other persons as the judge directs*