



**ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

CARB - 0203-0004B/2012

IN THE MATTER OF A COMPLAINT filed with the City of Lethbridge Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Vandeland Inc - Complainant

- a n d -

City of Lethbridge - Respondent

BEFORE:

Members:

Tom Golden, Presiding Officer

Wayne Stewart, Member

Darwin Nikoleychuk

A hearing was held on Tuesday, June 26, 2012 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessments of the following property tax roll numbers:

Roll No./ Property Identifier	Assessed Value	Owner
1-2-240-4301-0001 4301 24 Avenue South	\$453,000	Vandeland Inc. Brian Vandeberg
1-2-240-4403-0001 4403 24 Avenue South	\$573,800	Vandeland Inc. Brian Vandeberg
1-2-240-4505-0001 4505 24 Avenue South	\$562,500	Vandeland Inc. Brian Vandeberg
1-1-430-2325-0001 2325 43 Street South	\$1,333,000	Vandeland Inc. Brian Vandeberg

Appeared on behalf of the Complainant:

- Cameron D. MacLennan – Huckvale Wilde Harvie MacLennan
- Tim Waters – WA Environmental Services Ltd.
- Brian Vandeland Inc./Brian Vandeberg

Appeared on behalf of the Respondent:

- Verle Blazek, Assessor, City of Lethbridge
- Gord Petrunik, Assessor, City of Lethbridge



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PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

As indicated above the complaint concerns four roll numbers, identifying four separate parcels of land. The parcels are used by the businesses that operate a broad range of recreational vehicle (RV) sales service and storage.

The first parcel the decision will be concerned with the parcel located at 2325 43 Street South is a developed 1.14 ha (2.84 ac) which contains the buildings that are central to the commercial operation. There are two structures on the site firstly a 457.9 square meters (sq m) (4929 square foot) (sq ft) building containing the sales portion of the operation and secondly a 463.2 sq m (4987 sq ft) containing a service/warehouse use. This land is designated Highway Commercial

The next two parcels are considered together. Land located at 4403 24 Avenue South is a vacant 2.06 ha (5.1 ac) parcel currently used for RV storage. The parcel is designated Future Urban Development.

The land located at 4505 24 Avenue South is a vacant 2.02 ha (5.0 ac) parcel currently used for RV storage. The parcel is designated Future Urban Development.

Lastly; the parcel located at 4301 24 Avenue South is a vacant .42 ha (1.04 ac) currently used for RV storage. The land use designation is Highway Commercial and it is located at the corner of 43 St and 24 Ave. Access to this parcel is from an internal service road across the frontage of 2325 43 St.

None of the parcels are serviced with water or sewer although an arrangement for sewer pick up has been made for 2325 43 Street South, the developed site. All of the parcels seem to have potential for future urbanization.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below..

PART C: ISSUES

The presentations regarding the complaint indicated that the two properties at 4403 24 Avenue South and 4505 24 Avenue South, the +- 2 ha parcels (5 ac), had similar evidence. Some aspects of the remaining properties varied and had additional evidence introduced separately to address the individual complaint. This decision is divided into three parts based on the evidence provided. 2325 43 Street South will be determined first as the evidence regarding contamination mostly applied to this parcel and by implication was an impact on the other three titles.



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1) 2325 43 Street South Roll # 1-1-430-2325-0001

ISSUE 1:

Is the parcel contaminated and if it is does should the Board adjust the assessment?

Complainant's Position

The representative of the Complainant summarized the position for this property by stating the land is contaminated and the assessment is excessive. To support this position Mr. Tim Waters of WA Environmental Services was introduced as a witness. Mr. Waters' credentials were presented to the Board and the Board accepted Mr. Waters as an expert in the field of soils testing and contamination. Through questioning by counsel Mr. Waters elaborated on the report found in appendix 1 entitled Skyline Travel Centre Phase II Environmental Site Assessment (the report).

The report was commissioned by Mr. Vandenberg, the Complainant, to investigate the possibility of soil contamination on the subject property. Mr. Waters conducted a phase 2 environmental study which included drilling three test bore holes. The test bore holes were located along the westerly boundary of the subject property. The two southerly bore holes yielded results that fell within Provincial standards. The third bore hole or the most northerly, yielded results in excess of provincial standards for a number of chemicals related to service station environmental problems.

The source of the contamination in Mr. Waters opinion is most likely originated from an older demolished gas station. This opinion was not part of the phase 2 study rather related to Mr. Waters' previous employment. Although the location of the old service station tanks is unclear the buildings and tanks were removed in part to facilitate highway improvements. The total extent of the contamination on the subject parcel is unknown Mr. Waters is confident the contamination affects more of the parcel but without further study the "plume" of contamination cannot be determined. Methods of identifying the area of contamination on the property and methods of reclamation were discussed. Cost to alleviate the situation could not be estimated.

Mr. Waters then discussed a property at 203 28 St. South, the old Henderson Lake Turbo, which the Complainant also owns. This property was a former gas station demolished recently. WA Environmental Services also conducted a soils study on this property. The results showed contamination across the entire site. Contamination was at such a high a level that soil was not allowed to be removed from the site for reclamation. In part this soils analysis conducted by WA Environmental Services allowed Mr. Vandenberg to negotiate a purchase price for the land of \$80,000.00 rather than the listed value of the mid \$300,000.00. In discussion with the Assessment Department the assessment on 203 28 St. South was reduced to the sale value of \$80,000.00. This in the opinion of the Complainant reduced the assessment of 203 28 St. South some 75% and provides a precedent for assessment when soil contamination is present.

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The Complainant suggested that given contamination on the subject site a reduction in assessment of 75% would be reasonable and this is the basis of the requested value. As for the date the report was provided; the representative of the Complainant suggested that the source of the contamination was presented prior to the year the tax was imposed and the Board should apply the information in the report.

Respondent's Position

Through the Respondent's presentation and questions to the Complainant it was pointed out that the soils study was able to show contamination, but in only one of three bore holes located within 4 ft of the property line. No cost of remediation was given and the recommendation. The extent of contamination on the land was not determined and the impact on property value was not demonstrated. The assessment should not be changed on the basis of the Complainant's evidence.

The Respondent pointed out that the report was prepared in March 2012 and that is post facto to the assessment year.

Decision: Issue 1

The WA Environmental Services report indicates site contains some level of contamination. However based on the evidence the assessment is confirmed.

Reasons: Issue 1

The report and testimony of Mr. Waters was convincing as to the issue of contamination although the extent of the problem and the cost of remediation were not conclusive. However aside from the technical aspects of the report the Board considered section 289 of the MGA:

289(1) Assessment for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) Each assessment must reflect

- (a) the characteristics 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.*

It was noted that the report was provided on March 8, 2012 and therefore outside the tax year under consideration. In response to the issue of section 289 the representative of the Complainant suggested that the source of the contamination was presented prior to the year the tax was imposed and the Board should apply the information in the report. In the opinion of the Board the assessment department could not be expected to have this knowledge when the assessment was prepared. The assessment represents market value for the time it was prepared. The assessment meets the requirement of the Act and therefore the Board is unwilling to adjust the assessment.



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2) 4403 24 Avenue South Roll # 1-2-240-4403-0001 and 4505 24 Avenue South Roll # 1-2-240-4505-0001

ISSUE 1:

Are the two subject parcels equitably assessed in comparison to similar properties?

Complainants Position

The Complainant's properties are assessed at \$112,500.00 per acre and this is excessive. The Board was referred to a map on page 32 of Exhibit 1. The map showed 5 parcels all in the immediate area of the subject property. Three parcels in particular were felt to be similar in nature to the subject and had assessments of between \$2000.00 and \$6000.00 per acre. The average of those three comparables is \$4000.00 per acre resulting in the requested assessment of \$200,000.00 per acre. Since the adjacent parcels were assessed at this lower rate it is reasonable to reduce the subject properties assessment to reflect an equitable assessment with nearby properties.

Respondent's Position

The Respondent discussed the method of assessing farmland and pointed out that farmland is a regulated assessment. Farmland is assessed with a method that yields a low property assessment. At one time the subject lands were assessed as farmland. This situation changed when the use of the land changed to RV storage. RV storage on the sites means the property no longer meets the definition of farmland. The three comparables used by the Complainant to demonstrate inequity were assessed as farmland and are not similar in nature to the subject lands.

The Respondent pointed out a table of sales comparables used by the Assessment Department contained in Ex 1. It was made clear that some of the comparables were not very similar in nature to the subject. After reviewing their own data the Respondent felt that the calculations made by the Assessment Department were in error and suggested the assessments could be reduced to better reflect the data. It was recommended the assessments be reduced to \$395,200.00 for the property at 4403 for 24 Avenue South Roll # 1-2-240-4403-0001 and to \$387,500.00 for the property at 4505 24 Avenue South Roll # 1-2-240-4505-0001.

Decision: Issue 1

The Board is of the opinion that the original assessment, of the subject properties, was not prepared correctly and agrees with the Respondent's recommendations. The assessment is reduced to \$395,200.00 for the property at 4403 for 24 Avenue South Roll # 1-2-240-4403-0001 and to \$387,500.00 for the property at 4505 24 Avenue South Roll # 1-2-240-4505-0001.



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Reasons: Issue 1

The value requested by the Complainant was based upon properties that were assessed using the regulated farmland rates. Photos and evidence indicate that the subject lands are properly assessed using the direct comparison method. The regulated farmland assessment does not apply to this property as the land is no longer used as farmland. Although the Respondents comparables are somewhat questionable they amount to the best evidence available to the Board. The Board also accepts that an error occurred in the calculation of the assessment. It is a reasonable action to correct the error in this decision and reduce the assessment accordingly.

ISSUE 2:

Are the subject parcels contaminated and if they are should the Board adjust the assessment.

Decision: Issue 2

The assessment is not adjusted.

Reasons: Issue 2

In a previous decision in this Order the Board did not accept that the WA Environmental Services report regarding contamination on the site at 2325-43 Street South was applicable in the assessment year in question. Therefore the issue of implied contamination of all the other subject properties is also not accepted.

3) 4301 24 Avenue South Roll #1-2-240-4301-0001

ISSUE 1:

Is the subject parcel equitably assessed in comparison to similar properties?

Complainants Position

For the issue of equitable assessment the Complainant put forward the same evidence as the above vacant parcels.

Respondent's Position

As with the above parcels the Respondent used the same evidence and again determined that an error had occurred in the analysis of the data and this resulted in a higher assessment than accurate. The respondent recommended this parcel have a reduced assessment of \$362,400.00



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Decision: Issue 1

The subject property was not assessed correctly and the Board reduces the assessment to \$362,400.00 for the property at 4301 24 Avenue South Roll #1-2-240-4301-0001

Reasons: Issue 1

The Reason for this decision is the same as above and the Board also accepts that an error occurred in the calculation of the assessment. It is a reasonable action to correct the error in this decision.

ISSUE 2:

Is the parcel contaminated and if it is should the Board adjust the assessment.

Decision: Issue 2

The assessment is not adjusted.

Reasons: Issue 3

In a previous decision in this Order the Board did not accept that the WA Environmental Services report regarding contamination on the site at 2325-43 Street South was applicable in the assessment year in question. Therefore the issue of implied contamination of all the other subject properties is also not accepted.

ISSUE 3:

Is the assessment correct when the attributes of the site are considered.

Complainants Position

The Complainant stated that development was restricted because of a power line that traverses the property. The land title for the property indicates that there is an easement registered for a public utility. In addition to the actual power line right of way the Complainant understands that building is restricted for some distance either side of the easement and makes 1/4 of the parcel undevelopable.

Respondent's Position

The Respondent agreed that an easement existed on the property but was unaware that the easement was for a power line. Information indicated the easement was a water line. The Respondent also questioned the possibility of the building restrictions. In the opinion of the Respondent the evidence of the Complainant was inconclusive and should not affect the assessment on the subject parcel.



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Decision: Issue 3

The assessment is not adjusted by reason of site attributes.

Reasons: Issue 3

The Board recognizes that an easement exists on title and is intended to accommodate a utility. Without reviewing the actual document and receiving details of the impact of the easement on property value there is no basis to adjust the assessment. The Complainant did not provide any evidence to support the contention that the development of the land is significantly impaired.

PART D: FINAL DISPOSITION OF COMPLAINT

The complaint is allowed (or denied) and the assessments are set (or confirmed) as follows.

Roll No./Property Identifier	Value as set by the CARB	Owner
1-2-240-4301-0001 4301 24 Avenue South	\$362,400.00	Vandeland Inc. Brian Vandeberg
1-2-240-4403-0001 4403 24 Avenue South	\$395,200.00	Vandeland Inc. Brian Vandeberg
1-2-240-4505-0001 4505 24 Avenue South	\$387,500.00	Vandeland Inc. Brian Vandeberg
1-1-430-2325-0001 2325 43 Street South	\$1,333,000.00	Vandeland Inc. Brian Vandeberg

It is so ordered.

Dated at the City of Lethbridge in the Province of Alberta, this 12th day of July, 2012.

Tom Golden, Presiding Officer

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DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

NO. ITEM

1. Board Package

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING CAPACITY

1. Cameron D. MacLennan – Huckvale Wilde Harvie MacLennan
2. Tim Waters – WA Environmental Services Ltd.
3. Brian Vandeland Inc./Brian Vandeberg

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ADDRESS	Appeal Type	Property Type	Sub Property Type	Issue	Sub Issue
4301 24 Avenue South	CARB	Retail	Stand Alone	Sales Cost Approach	Land and Improvements
4403 24 Avenue South	CARB	Retail	Stand Alone	Sales Cost Approach	Land and Improvements
4505 24 Avenue South	CARB	Retail	Stand Alone	Sales Cost Approach	Land and Improvements
2325 43 Street South	CARB	Retail	Stand Alone	Contamination	Petro Chemical