



County of Thorhild No. 7

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IN THE MATTER OF A COMPLAINT filed with the County of Thorhild No 7 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:

Ron and Donna Costain- Complainant

- a n d -

County of Thorhild No 7 - Respondent, represented by Dan Kanuka, Assessor.

BEFORE:

Members:
D Trueman, Presiding Officer
K Grumetza, Councillor
J Olson, Councillor

A hearing was held on November 7, 2012 in the County offices, in Thorhild, Alberta. County of Thorhild administrative staff member, Cindy Hutchison was present to assist with management of the official documents record and electronic recording equipment. The hearing was for the purpose of considering complaints about the assessment of the following property:

Roll numbers: 418163055 and 418163065

Legally described as: Lots 4, 5 and 6, Block 1, Plan 112-0634

2012 assessments: Lot 4, \$109,830 and Lot 5, \$168,700

PART A: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make procedural decisions under Part 11 of the Act and accordingly placed the parties under oath. Upon questioning by the Presiding Officer there was no objection to either the hearing procedures or the composition of the panel.

Lots 4 and 5 are separately titled properties and complaints have been filed on each of these properties separately. The parties have agreed that the evidence and testimony regarding market value and assessment complaint is the same for both lots and thus in the interest of efficiency a single hearing and one decision outlining assessments for both roll numbers will be appropriate. It must be noted that the complaint for lot 5 should have been described as a complaint for lots 5 and 6. At hearing the CARB learned that lots 5 and 6 are combined under the same assessment notice as the result of a building straddling the property line.

PART B: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The linen for the plan of survey, Plan 112-0634, which depicts subdivided property was recently registered in 2011. The zoning classification for the complained properties is DC 4, which is a direct control zoning.

Lot 4 supports a building described as a warehouse which was built in 1997 and contains 12,688 ft.² on a land base of 2.82 acres. Lots 5 and 6 support a building described as a warehouse containing a total of 33,800 ft.² which straddles the property line between lots 5 and 6, for which the assessor has deemed an effective year built of 1970, on a combined land base of 7.56 acres. At hearing the panel learned that the larger building had been “grandfathered” into the subdivision. The CARB notes that there can be consequences regarding the use of such a building however there was no such evidence produced at this hearing. The foregoing buildings were originally used as chicken barns however as at the effective dates for assessment the buildings were vacant and unused.

PART C: ISSUES C

The Complaint Form indicates that there were 4 matters for complaint namely: “assessment amount”, “assessment class”, “type of property” and “type of improvement”. Once the CARB had heard the complainant evidence and testimony it was determined that the issue should be characterized as: has the assessor over assessed the property based upon its non-use or vacant status and considering the assessments of similar properties in the same neighborhood..

PART D: COMPLAINANT POSITION

The complainant testified that his properties should not have an Industrial classification as they are located in a subdivision which is zoned for country residential, with home-based business. He went on to further point out that the buildings, as former chicken barns, are in poor condition and are unusable, not the least of which is because services such as gas, power and water have been either disconnected or removed or both. He pointed out that the building which straddles lots 5 and 6 had been “grandfathered” into the subdivision however, he did not describe how this might have restricted its use. The complainant referenced his letter to the assessor of September 25,

2012, identified as exhibit C1, where he advised the assessor of 2 properties of vacant lots in the subdivision, for the purpose of mill rate comparison.

At hearing the complainant was adamant that his taxes were too high and that roughly \$7000 in taxes was too much to pay for 2 buildings without services, formerly used as chicken barns and currently being unused. The complaint form for Lot 4 suggested that \$70,000 would be an appropriate assessment and for Lot 5, \$100,000.

PART E: RESPONDENT POSITION

The respondent agreed that his assessment notice for Lot 5 in fact included Lot 6 and that there was indeed a building straddling the property line between these lots. He said that once his initial assessment had been completed he met with the complainant and examined the condition of the buildings noting that services had been disconnected. For these and other reasons he issued amended assessment notices on June 25, 2012 for Lot 4 at \$109,830 and Lots 5 and 6 at \$168,700. He said that this totaled \$278,530 as compared to his original aggregate assessment of \$579,890 and that this reduction more than compensated for the unused condition of the buildings. He advised the panel that after the land was abstracted from the total, the buildings were valued at approximately \$5.50 per square foot. He further advised the panel that there was signage on the property which indicated that someone was intending to use the buildings for antique car auctions.

The assessor directed the attention of the CARB to the Affidavit of Transferee in the Transfer of Land, on page 28 of exhibit R1 for the subject Lots 4, 5 and 6. This property transferred to the complainant on October 21, 2011 for \$650,000. He said that given the aggregate assessment above for lots 4, 5 and 6 of \$278,530 as compared to the arm's-length purchase price in October 2011 for \$650,000, his assessment was more than fair and reasonable.

The respondent pointed out to the panel that the DC 4 zoning classification provided to the subject property allowed for it to be used as either industrial or commercial. He went on to describe his use of his Marshall and Swift valuation services data describing where he had used adjustment factors for both chicken barns and unused or vacant or un-serviced. He said that this was his primary source for determining the improvements value.

Finally the assessor criticized the complainant's comparable properties providing evidence that one of the properties contained a home and garage and was assessed as residential while the other was a vacant residential lot and was similarly assessed as residential.

PART F: DECISION

The complaint is denied and the assessment for Lot 4 is confirmed at **\$109,830** and the assessment for Lots 5 and 6 is confirmed at **\$168,700**.

It is so ordered.

PART F: REASONS

The CARB prefers the evidence of the respondent. Applicable legislation which provides direction is as follows: *Municipal Government Act 289(1) assessments for all property in the 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 the taxes are imposed under part 10 in respect of the property and (b) the valuation and other standards set out in the regulations for that property. Alberta Regulation 220/2004 Part 1, Standards of Assessment, Valuation standard for a parcel of land 4 (1) the valuation standard for parcel of land (a) market value. MGA1 (1) In this Act, (n) "market value" means the amount that a property as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.*

Sales evidence suggested that the complainant had purchased the subject property in 2011 for \$650,000. Given the relative similarity of the transaction date and the July 1 valuation date aggregate assessments of \$278,530 is a more believable expression of market value than the complainant's requested aggregate value of \$170,000.

It is generally accepted that the responsibility of proof of error lies with the complainant. In other words, it is the complainant's responsibility to establish that the assessment does not meet with the requirements of the Municipal Government Act (MGA) and its Regulations. In this case it was decided that the complainant had failed to meet this obligation by not providing examples of similar property sales that were persuasive to the Board; or alternatively, other accepted valuation techniques or property appraisals that would have supported his claim. The CARB accepts the evidence of the respondent that the comparables presented by the complainant were either improved with sufficiently different improvements so as not to be similar, or else otherwise demonstrated a land-use classification requiring a sufficiently different use so as to render it not similar. Their values are therefore not instructive for the purpose of this decision.

The CARB notes that the *MGA section 467(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.*

In the event that the CARB had agreed that the vacant parcel of land cited by the complainant offered comparability then a review of the assessed amount revealed an assessment of \$22,064.52 per acre. Applying this amount to the total acreage of the subject property at 10.38 acres a land value of \$229,029 is revealed. Under this scenario the aggregate assessment for the subject property would suggest building values of \$1.06 per square foot. Based upon this analysis it is the decision of the CARB that the assessment is fair and reasonable.

Finally, *MGA section 460 (1) a person wishing to make a complaint about any assessment or tax must do so in accordance with this section (6) there is no right to make a complaint about any tax rate.*

Dated at the town of Thorhild in the Province of Alberta, this 29th day of November 2012.

"DARRYL TRUEMAN"

Presiding Officer, Darryl Trueman

PER: Andy Hutchinson

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
1. Exhibit.C-1	complainant letter
2. Exhibit R-1	respondent evidence for both roll numbers
3. Exhibit R-2	respondent evidence
4. Exhibit R-3	respondent evidence
5. Exhibit R-4	respondent evidence

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Warehouse	Single tenant		

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