

WHEATLAND COUNTY – Notice of Decision - 0349 001/2011
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

IN THE MATTER OF A COMPLAINT filed with Wheatland 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:

Lance Wheeler
Heather Wheeler -Complainant
Stuart Wheeler

- a n d -

Wheatland County - Respondent

BEFORE:

Members:
Rob Irwin, Presiding Officer
T. Tower, Member
E. Deeg, Member
J. Laslo Acting clerk

A hearing was held on Wednesday, November 16, 2011 in the Wheatland County offices, in the Province of Alberta to consider a complaint about the assessment of the following property tax roll number:

- Roll # 8749000
- Legal NW-19-22-26-W4 (149.87acres)

Appeared on behalf of the Complainant:

- Lance Wheeler
- Stuart Wheeler
- G. Szakaly: Witness and acquaintance

Appeared on behalf of the Respondent:

- D. Klem Senior Assessor for Wheatland County

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 149.87 acre parcel, Legal NW-19-22-26-W4, located in the southwest portion of Wheatland County. The Assessor determined during the completion of the assessment under appeal that approximately 21.50 acres within the Roll #874900 no longer qualified as FL (Farmland) due to DP2010-011 re: Natural Resource Extractive. This part of the parcel was changed to assessment class NR (Non residential) and assessed at market value

WHEATLAND COUNTY – Notice of Decision - 0349 001/2011
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

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.

PART C: ISSUES

The Complainant identified two matters [(4) an assessment class and (6) the type of property] on the complaint form.

ISSUE 1: an assessment amount

ISSUE 2: an assessment class

Complainant's Position:

The Complainant stated that the subject property was farmland that had been improved. The development permit issued by the County of Wheatland had a 1 year term and the work was completed in accordance with the permit. The Complainant stated that it was not fair that the landowners were not advised that the taxation status could change due to acquiring permit DP2010-011 and expressed concern that the assessor, while preparing the assessment had not communicated with the landowner until May 2011 but rather had approached the development permit applicant in February.

The complainant submitted that the property under appeal was farmland in the past and is farmland now as stated and agreed to in the permit issued by Wheatland County. The Complainant did acknowledge a delay in initiating the work due to completion of environmental study and unusually wet weather. The work had taken longer than forecast but was completed as agreed within the time limits prescribed in the permit. The Complainant commented that on December 31, in Alberta, it is obvious that many of the horticulture, aviculture, apiculture and aquaculture farming operation activities may enter a period of dormancy but the use would remain intact through that period. The Respondent asked the Board to correct the assessment class to farmland and adjust the resulting assessment amount.

WHEATLAND COUNTY – Notice of Decision - 0349 001/2011
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

Respondent's Position:

The Respondent presented evidence supporting that the methods used in completing the assessment were correct and that the assessment was completed in strict accordance with the legislation. The senior assessor gave evidence that on the actual date of Dec 31 2010 the property was not being farmed and therefore did not qualify as FL (Farmland). The respondent believed that the reclassification was correct according to the MGA 289 (2) which states;

-Each assessment must reflect

a) the characteristics and physical condition of the property on December 31 of the year prior to the year the tax is imposed.

Board Findings:

The Board found the details describing how the property was actually used prior to and now, after the DP work was completed revealing.

The Board considered the Complainants photographs and contour evidence as well as the scope of work included in context of the development permit and agreed that there was an improvement in the farmability.

The Board found that during the preparation of the assessment under appeal the assessor did not initially contact the landowner in compliance with the intent of the MGA Section 294 (1).

- "after giving reasonable notice to the owner or occupier of any property"
and compromised MGA Section 294 (3).

- "An assessor must, in accordance with the regulations, inform the owner or occupier of any property of the purpose for which the information is being collected under this section and section 295".

Decision:

The Board referred to the MGA Section 467 (1) which states;

-An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or decide that no change is required.

The Board allows the complaint and directs that the property under appeal be assessed as farmland for the assessment period of the property under appeal.

WHEATLAND COUNTY – Notice of Decision - 0349 001/2011
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

ISSUE 1: an assessment amount

The Board decided that the assessment amount of this appeal shall be recalculated by the assessor by applying the FL class to the assessment.

ISSUE 2: an assessment class

The Board decided that the Property under appeal shall be assigned class FL for the 2011 tax assessment.

Reasons:

The Board considered the activities undertaken within the development permit as typical land leveling activities and that they are historically and in this appeal considered as agricultural activities. The Complainant had disclosed that the leveling was to improve productivity on previously un-farmable land, and prior to reclamation, he sprayed this land in order to enable future crop seeding.

The definition of farming operation is found in the MGA section MRAT, (Matters Relating to Assessment and Taxation Regulation) definitions 1: i

- "farming operations" means the raising, production and sale of agriculture products.

The Board agreed that improving the productivity of the farmland was part of the production and sale of agricultural products as contemplated in the definition.

The Board referred to the MGA Section 467 (3)

-an assessment review board must not alter any assessment that is fair and equitable.

The Board decided that it was fair and equitable that the property under appeal continue to be assessed as farmland in the 2011 tax assessment.

Dated at the Carstairs Alberta in the Province of Alberta, this
30 Day of November 2011.



Presiding Officer
R. H. Irwin