

NOTICE OF DECISION NO. 0506 01/10

**MUNICIPAL DISTRICT OF BIG LAKES
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the Matter of the *Municipal Government Act*, being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

And in the Matter of an assessment complaint filed with the Municipal District of Big Lakes 2010 Assessment Review Board.

Between

1324453 Alberta Ltd. (Marc Gautier) - Complainant

and

Municipal District of Big Lakes - Respondent

Before

J. Schmidt, Presiding Officer

A. Billings, Member

G. L'Heureux, Member

This is an assessment complaint decision of the Composite Assessment Review Board (CARB), from a hearing held in the Municipal District administration office in the Town of High Prairie on December 13, 2010 respecting a property assessment entered in the assessment roll of the Respondent municipality as follows.

Roll No.	363992
Assessed Value	\$179,170
Legal Description	Plan 0822756, Block 8 Lot 1 (Pt. NE 8-74-13-W5)

Appearances:

Complainant	Ms. Linda Cox, Agent for Marc Gautier, owner of 1324453 Alberta Ltd.
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Respondent	Mr. Al McNaughton, appointed municipal assessor for the Municipal District of Big Lakes
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Assessment Review Board

Ms. Lynne Sawchyn, Clerk of the Court
Ms. Helen Kozie, Assistant Clerk of the Court

Observers

Mr. Harry Prokiw, Chief Executive Officer, Municipal
District of Big Lakes
Mr. Randy Ehman, Municipal Councillor, Municipal
District of Big Lakes

Background and Property Description

The subject property is located in the Hamlet of Joussard and has a land use zoning of H.C. (Hamlet Commercial). Located on the land is a building used as a restaurant. The parcel of land is owned by 1324453 Alberta Ltd. of which Mr. Marc Gautier is the principal owner. The building located on the subject land is owned by 708683 Alberta Ltd. of which Ms. Linda Cox is the principal owner. The building is a prefabricated structure which was moved on site approximately two years ago. Ms. Cox has a lease agreement to occupy the subject site for purposes of operating a restaurant. On expiry of the lease agreement the building is to be removed. This facility has operated for a period of four to five months during the mid spring to late summer months on an annual basis.

For purposes of property assessment the cost approach to market value was applied. This approach combines the land value established by use of sales data of similar parcels of land and adding the estimated replacement cost new less depreciation of improvements to the land for a total indication of property market value. In this case the land assessed value is \$38,310 and the improvement assessed value is \$140,860 for a total property assessed value at \$179,170.

The complaint came forward on grounds the building in this case cannot be assessed to the owner of the land because it does not fall within the meaning of property.

To resolve this matter, it is apparent there are two main issues which require consideration in deciding the outcome of the complaint hearing.

Issues

- Is the subject building “property” pursuant to the Act?
- If it is property, is it assessable to the owner of the parcel of land or is it otherwise dealt with as assessed property?

Legislation

In deciding the outcome of this complaint the matter is not one of assessed value rather it is directly dependent on determining firstly whether or not the building in question falls within the meaning of property as defined in the Act and secondly, whether or not it is assessable to the owner of the land.

The provisions of the Act which were given particular consideration are as follows.

Municipal Government Act

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

289(1) Assessments 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

(b) the valuation and other standards set out in the regulations for that property.

284(1) In this Part and Parts 10, 11 and 12,

(f.1) "designated manufactured home" means a manufactured home, mobile home, modular home or travel trailer;

(m) "manufactured home" means any structure, whether ordinarily equipped with wheels or not, that is manufactured to meet or exceed the Canadian Standards Association standard CSA Z240 and that is used as a residence or for any other purpose;

(n.1) "mobile home" means a structure that is designed to be towed or carried from place to place and that is used as a residence or for any other purpose, but that does not meet Canadian Standards Association standard CSA Z240;

(r) "property" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it;

(j) "improvement" means

(i) a structure,

(iii) a designated manufactured home,

(u) "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;

1(1) In this Act,

(v) "parcel of land" means

(i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;

304 (1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

<i>Column 1</i>	<i>Column 2</i>
<i>Assessed property</i>	<i>Assessed person</i>
<i>(a) a parcel of land, unless otherwise dealt with in this subsection;</i>	<i>(a) the owner of the parcel of land;</i>
<i>(b) a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;</i>	<i>(b) the owner of the parcel of land;</i>
<i>a designated manufactured home</i>	<i>(k) the owner of the designated</i>

(k) *located on a parcel of land that is not owned by the owner of the designated manufactured home together with any other improvements located on the site that are owned or occupied by the person occupying the designated manufactured home.*

manufactured home if the municipality passes a bylaw to that effect.

Complainant's Position

The complainant took the position that the subject building is a trailer which is owned by other than the owner of the subject parcel of land. As such it would not be part of any land transfer/sale initiated by the owner of the land, 1324453 Alberta Ltd. (Mr. Gautier). It was argued that for the trailer to be assessed it must be an improvement as defined in the Act. An improvement is given meaning as being a structure. A structure is given meaning, in part, as a building ... whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land. Since the landowner does not own the trailer/building, it clearly cannot be transferred without special mention. As a result the trailer cannot be considered a structure within the meaning provided.

Both the meaning of "manufactured home" and "mobile home" pursuant to the meaning of a "designated manufacture home" include the meaning structure and therefore the subject trailer/building cannot be considered an improvement as a "designated manufactured home".

Since the trailer is not a structure within the meaning given in the Act it cannot be an improvement as defined and therefore it is not property which can be assessed. It was therefore requested that the improvement portion of the assessment at \$140,860 be removed from the assessment roll. In support of this position, Exhibits C-1 (2 pages), C-2 (9 pages) and C-3 (1 page) were entered.

Respondent's Position

The Respondent submitted that the building at issue is a manufactured home used as a restaurant. As such, it is an improvement to the land and is assessable as property. This property is generally referred to as real estate property. To support this submission (Exhibits R-1 (9 pages) and R-2 (1 page) were entered as evidence. It was offered that Exhibit R2 has no effect on the outcome of the complaint and was provided only to show the subject improvement is not a travel trailer where no assessment is to be prepared.

Even though the landowner, in this case, does not own the improvement (building), the parcel of land and the improvement to it must be recorded on the assessment roll to the owner of the parcel of land (Exhibit R-1 page 5). Since an improvement means a structure it is necessary to consider the meaning of structure as provided in the Act.

The subject building falls within the meaning of structure and therefore is an improvement which is to be placed on the assessment roll as assessed property.

During the review of the property assessment for this hearing it was observed that the building size was originally recorded in error. By revising the building area from 1,520 square feet to the correct area of 1,200 square feet a revised improvement value at \$116,340 in place of \$140,800 was determined. It was therefore requested a total revised assessment of \$154,650 in place of the original assessment at \$179,170 should be placed on the assessment roll.

Following a review of the legislative provision together with giving careful consideration to the evidence, argument and fact which came forward in this case the following findings are made.

Findings

1. The building at issue falls within the meaning of “property”.
2. Even though the building at issue falls within the meaning of property, it is not assessable to the owner of the parcel of land as it is otherwise dealt with as “assessed property”.

Decision

The assessment complaint is allowed.

This decision is made for the following reasons.

Reasons

Particular consideration is given to the meaning given to property as provided pursuant to s.284(1)(r) of the Act. For purposes of municipal property assessment and taxation, property has been described as “a parcel of land”, “an improvement” or “a parcel of land and the improvements to it”.

When regard is given to the meaning of a parcel of land pursuant to s.1(1)(v) of the Act, there can be no doubt the subject land is “property” described as “a parcel of land” and the owner of the parcel of land must be recorded on the assessment roll as the assessed person in the first instance.

Even though the subject property is a parcel of land in the first instance the question remains, can the subject property be described as “a parcel of land and the improvements to it”. If it can, then the owner of the land, 1324453 Alberta Ltd. (Mr. Gautier) must be recorded on the assessment roll as the assessed person pursuant to s.304(1)(b) of the Act, as submitted by the Respondent. If it cannot, then the assessed property can only be described as “a parcel of land” which must be recorded on the assessment roll in the name of the owner of the parcel of land pursuant to s.304(1)(a) of the Act.

To be property described as “a parcel of land and the improvements to it” requires a review of the meaning given to “an improvement” under s.284(1)(j). For purposes of this hearing, improvement as “a structure” and “a designated manufactured home” is given particular consideration.

A structure is given to mean a building or other thing, which becomes transferred without special mention by a transfer or sale of the land. Where a transfer without special mention is transacted a building or other thing, as a structure, is an improvement to the land. As such it is property described as a parcel of land and the improvement to it.

The evidence in this case is that the subject building is not owned by the owner of the land, therefore a transfer or sale of the land would require the building be specially mentioned as not being part of the transaction. The result being the building at issue cannot be a structure with the meaning as provided.

A designated manufactured home is given to mean a “manufactured home” and/or a “mobile home” both having in part the meaning any structure or a structure that is used.

This meaning is dependent on a structure being used, which is different than a structure which is transferred. The evidence is that the building in this case is used as a restaurant and as such there can be no doubt that it is either a “manufactured home” or a “mobile home” within the meanings given. The result being that the building at issue is a designated manufactured home and therefore “an improvement” which falls within the description of property.

It may be that while the subject building is not property assessable to the owner of the land in this case, it is property described as “an improvement” which may be otherwise dealt with pursuant to s.304.

For the reasons given, the subject building cannot be recorded on the assessment roll as assessed property in the name of the owner of the parcel of land, 1324453 Alberta Ltd. (Mr. Marc Gautier).

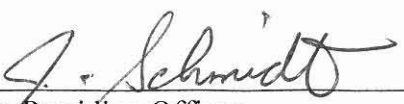
Accordingly the property assessment is reduced from \$179,170 to \$38,310.

It is so ordered.

No costs to either party.

Dated this 28th day of January 2011.

COMPOSITE ASSESSMENT REVIEW BOARD



J. Schmidt, Presiding Officer

cc: Composite Assessment Review Board, Municipal District of Big Lakes

This Decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470 of the Municipal Government Act, R.S.A. 2000, c.M-26. This section requires an application for leave to be filed with the Court of Queen's Bench within 30 days of receipt of this decision.