

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo Local Assessment Review Board (LARB) pursuant to Part 11 of the *Municipal Government Act* being chapter M-26 of the revised statutes of Alberta 2000.

BETWEEN:

G. J. and L. A. Herasimenko – Complainant

- and -

Regional Municipality of Wood Buffalo (RMWB) – Respondent

BEFORE:

A. McKenzie, Presiding Officer

D. Gorman, Member

K. Haxton, Member

Staff:

A. Hawkins, Clerk

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A hearing was convened on August 12, 2019 in the Regional Municipality of Wood Buffalo in the Province of Alberta to consider a complaint about the assessment of the following property:

Assessment Roll Number	71018720
Civic Address	52 Moberly Crescent, Fort McMurray, AB
Owner	Gerhardt J. and Lorna A. Herasimenko
File Number	ARB 19-020

[2] The subject property is a 3-bedroom, 1-bathroom, single detached residence with no basement development and a detached garage.

PROCEDURAL MATTERS

[3] The LARB derives its authority to make decision under Part 11 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

[4] The parties confirmed that they had no objections to the composition of the Board.

[5] The Board confirmed it had no bias in relation to the matters.

PRELIMINARY MATTERS

Issue

[6] The Respondent noted that evidence for this hearing was due on July 22, 2019 (Exhibit P1) and was only delivered to both the Assessment Review Board and the Assessment Services Department in the afternoon of July 23, 2019. On this basis and to ensure that everyone is treated fairly and equitably, it is requested that the submission not be included as evidence.

Position of the Complainant

[7] The Complainant confirmed they were aware of all deadlines associated with the hearing.

[8] The Complainant explained that a family emergency prohibited them from delivering their submission by the deadline date and that this information was communicated to the Clerk of the Board.

Position of the Respondent

[9] The Respondent agreed to the submission being included as evidence and offered no objection to the merit hearing proceeding.

PRELIMINARY DECISION

[10] It is the decision of the Local Assessment Review Board to proceed with the merit hearing.

REASONS ON PRELIMINARY DECISION

[11] The Board accepted the Complainant’s explanation for late submission of evidence and the Respondent presented no objection to the merit hearing proceeding; therefore, on that basis, the Board agreed to continue with the merit hearing.

[12] It is so ordered.

ISSUES

Issue identified on the complaint form	Assessment Amount	Requested Value
An Assessment Amount	\$434,460	\$334,460

MERIT MATTERS

Position of the Complainant

[13] The Complainant confirmed their position of appealing the assessed value of their property.

[14] The Complainant noted that they cannot enjoy their backyard due to the noise level generated by the highway traffic and the lack of sound abatement measures.

[15] The Complainant added that over time, the original two-lane highway has become a six-lane highway, resulting in increased traffic noise.

[16] The Complainant referenced the Noise Technical Report prepared by GHD for the Regional Municipality of Wood Buffalo (Exhibit C1) for Moberly Crescent Residences, which determined that some of these residences are exposed to sound levels above the recommended 65 A-weighted decibels (dBA) noise limit and recommended noise mitigation measures for the area be studied.

[17] The Complainant indicated that infrastructure work was done by the Municipality between 2014 and 2015 along the highway at which time trees, that served as a buffer between their property and the highway, were taken down but have not yet been replaced.

[18] The Complainant referenced photos (Exhibit C1) which show the gap in the tree line between the subject property and the highway resulting from these trees being removed as well as the visibility of the highway traffic from their property. The Complainant confirmed these photos were taken in early July 2019.

[19] The Complainant confirmed the Noise Level Study was conducted between September 11, 2018 and September 24, 2018 and the Report completed April 11, 2019 (Exhibit C1). There was no prior data or noise standards provided for comparison purposes.

[20] The Complainant concluded by requesting that the assessment be revised, to reflect the impact of the noise level on the property.

Position of the Respondent

[21] The Respondent spoke to property assessment valuation in Alberta, the mass appraisal methodology, the multiple regression analysis and the single-family residential assessment process (Exhibit R1).

[22] The Respondent identified the three approaches taken when determining value as being direct sales, income, and cost, noting that the direct sales approach is used to determine the assessment of residential properties, such as the subject property. The direct sales approach is used for single-family dwellings that are typically owner occupied as it reflects the actions of willing buyers and sellers in the market and provides enough residential sales comparisons to derive reliable market estimates (Exhibit R1).

[23] The Respondent presented that the subject property is in the Birch Grove neighbourhood of the lower townsite in Fort McMurray. The property includes a 958 sq. ft. bungalow with basement which was built in 1968 as well as a 951 sq. ft. detached garage, built in 2008. The Respondent noted this 3-bedroom, 1-bathroom, single detached residence above grade with no basement development below grade is considered of good condition and average quality as compared to other similar structures within the Municipality.

[24] The Respondent provided a table of four comparable property sales that occurred between July 2017 and June 2018 within the surrounding area. (Exhibit R1). The properties in the Comparable Sales Chart are similar to the subject property in age, size, quality and condition as well as the number of bedrooms and bathrooms. The time adjusted sales prices of these properties are similar to the assessed value of the subject property.

[25] The Respondent put emphasis on 1 Saunderson Avenue from their Comparable Sales Chart. This property also backs onto Highway 63 and would be subject to traffic

noise from the highway. There was no information related to noise mitigation measures associated with this property.

[26] The Respondent referenced the Complainant's Comparable Sales Chart (Exhibit R1), noting that while these properties may be similar to the subject property, they do not meet the requirement for inclusion in the valuation process. These sales either occurred after the valuation date of July 1, 2018 or were foreclosures, or both; therefore, do not meet the criteria of sales occurring on the open market, under typical market conditions, by a willing seller to a willing buyer.

[27] The Respondent presented the RMWB Comparable Sales Chart – Basement Finish Adjustment (Exhibit R1) which was developed by assessing all properties as if they had no basement. The adjusted values for the comparable properties range from \$420,000 and \$450,000, so the current assessed value of the subject property, \$434,640, does falls in line with these values.

[28] The Respondent offered that the sales analysis shows no evidence that sales have been impacted by noise levels in the neighbourhood or by proximity to the highway as supported by the Comparable Sales Chart and the supporting Comparable Sales Map (Exhibit R1) showing the location of the comparable sales.

[29] The Respondent concluded that Assessors are legislated on how they value properties. They are also required to compare valid, arm-length sales of similar properties and determine mass appraisal values based on those sales.

[30] The Respondent reiterated that the sales data provided by the complainant either did not occur prior to the July 1, 2018 valuation date or were foreclosures; therefore, are considered non-valid, non-arms-length sales and cannot be considered as comparable sales in this case.

[31] The Respondent asked the LARB to confirm the assessed value for the subject property at \$434,460 as proven by the comparable sales data provided.

[32] All parties confirmed that they had a fair opportunity to present their case to the Board.

DECISION

[33] It is the Decision of the LARB to confirm the assessment of \$434,460.

REASON FOR DECISION

[34] In coming to its conclusion, the Board has reviewed carefully the provisions of the *Municipal Government Act* (“MGA”), the *Matters Relating to Assessment Complaints Regulation* (“MRAC”) and the *Matters Relating to Assessment and Taxation Regulation* (“MRAT”).

[35] The Board determined through the presentations and evidence provided by the Complainant and Respondent, that the issue is the valuation of the subject property is incorrect based on:

- (a) the negative impact of traffic noise resulting from the subject property backing onto Highway 63 and,
- (b) comparable properties within a reasonable proximity of the subject property.

[36] The Board is satisfied with the Respondent’s use of the Direct Sales approach to determine the value of the subject property and accepted the Respondent’s Comparable Sales Chart (Exhibit R1), which utilized sales of comparable residential properties prior to July 1, 2018 that are of similar size, quality and condition within reasonable proximity of the subject property to determine the assessed value of the subject property.

[37] The Board was swayed in favour of the Respondent’s explanation that there is no evidence to suggest that proximity to Highway 63 has any effect on property values. The comparison of the sale value of 1 Saunderson Avenue, which backs onto Highway 63 compared to the other three properties on the Respondent’s Comparable Sales Chart (Exhibit R1), supports this conclusion.

[38] The Board gave little weight to the comparable sales data provided by the Complainant. The Complainant’s comparables were only real estate listings, which do not indicate date or nature of the sale. Further, the Respondent did provide sales data for these comparables provided by the Complainant. These comparables were shown to be post-facto, foreclosures, or both. The Board cannot consider post-facto sales, sales listings and/or non-arm’s length sales as evidence. Only actual sales from a willing buyer to a willing seller sold on an open market, transacted prior to July 1, 2018, can be considered.

[39] The Board did accept that there is likely excessive noise from Highway 63; however, was not able to give any weight to the Noise Technical Report (Exhibit C1). This report was completed post-facto and cannot be considered. Furthermore, no evidence was submitted to indicate there was a substantial change in traffic noise prior to the report.

[40] The Board was not convinced, based on the evidence provided and for what the Board has accepted, that Complainant was able to justify the requested assessment value of \$334,460.

[41] It is so ordered.

DISSENTING OPINION

[42] There was no dissenting opinion.

[43] The decision of the Local Assessment Review Boards is final and binding on all parties. This decision may be judicially reviewed by the Court of Queen's Bench pursuant to Section 470(1) of the *Municipal Government Act, RSA 2000, c M-26*.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this
29th day of August 2019

FOIP s.17(1)


Alex McKenzie, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE LARB

Exhibit Number	Description
P1	Notice of Hearing dated June 7, 2019 (6 pages)
C1	Complainant's Disclosure (61 pages)
R1	RMWB Assessment Disclosure (23 pages)
R2	RMWB 2019 Single Family Residential Assessment Guide (13 pages)
R3	RMWB Law & Legislation Brief (57 pages)

APPENDIX B

REPRESENTATIONS

Person Appearing	Capacity
Gerhardt J. Herasimenko	Complainant
Lorna A. Herasimenko	Complainant
Paula Fudge	Assessor, Regional Municipality of Wood Buffalo
Julie Peyton	Assessor, Regional Municipality of Wood Buffalo