

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:

Clearwater Village Properties – Complainant

- and -

Regional Municipality of Wood Buffalo– Respondent

BEFORE:

Alex McKenzie, Presiding Officer

Joshua Gogo, Member

Nayef Mahgoub, Member

Staff:

Darlene Soucy, Clerk

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A hearing was convened on October 22, 2022 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	71099060
Legal Description	Plan 0824071; Block 3; Lot 1
Owner	Clearwater Village Properties
File Number	ARB 22-035

[2] The subject property is 39.222 acres of multi-residential vacant land within the Longboat Landing neighbourhood of downtown Fort McMurray.

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 No. 1

- [6] The Respondent requested that in their Disclosure all references to the Queen's Printer should be changed to the King's Printer.

Position of the Respondent

- [7] The requested change in the reference to King's Printer is in keeping with the change in the ruling monarch from a Queen to a King upon the passing of Queen Elizabeth.

Position of the Complainant

- [8] The Complainant had no concerns with the updated references to King's Printer.

PRELIMINARY DECISION NO. 1

- [9] It is the decision of the Local Assessment Review Board to accept the Respondent's request to change the reference from Queen's Printer to King's Printer.

REASONS ON PRELIMINARY DECISION NO. 1

- [10] The change of reference to King's Printer is required due to the new reign of a King.
- [11] It is so ordered.

Issue No. 2

[12] The Respondent requested that due to a typographical error in their Disclosure (Exhibit R-1), the date in the second last paragraph on page 7 should be July 1, 2016 and not July 1, 2017. The sentence should read “The RMWB reviews sales occurring from July 1, 2016 to June 30, 2021 in evaluating Multi-residential land parcels”

Position of the Respondent

[13] The Respondent noted that the Assessment Branch’s standard practice is to review five years of sales data for assessments that are determined by the direct sales approach. Upon questioning, the Respondent noted that using five years of sales data is not legislated and is just a standard practice for the Assessment Branch.

Position of the Complainant

[14] The Complainant is not in agreement with the requested date change, as the information and date provided in that section of the Respondent’s Disclosure directly correlates to the Complainant’s Rebuttal.

PRELIMINARY DECISION NO. 2

[15] It is the decision of the Local Assessment Review Board to deny the requested date change from July 1, 2017 to July 1, 2016.

REASONS ON PRELIMINARY DECISION NO. 2

[16] The change of date to provide a range of five years of sales data is not legislated, there is no evidence to support the date change, and the Respondent’s Rebuttal relies on the date of July 1, 2017.

[17] It is so ordered.

Issue No. 3

[18] The Complainant requested that the matters before the Local Assessment Review Board in file numbers ARB-22-034 and ARB 22-035 be brought before the Board jointly.

Position of the Complainant

[19] The Complainant noted that the information and evidence for both ARB 22-034 and ARB 22-035 are comparable and nearly identical so it would be more efficient to conduct the hearings together.

Position of the Respondent

[20] The Respondent is in agreement with the request to hear both files together.

PRELIMINARY DECISION NO. 3

[21] It is the decision of the Local Assessment Review Board to grant the Complainant's request that the matters for ARB 22-034 and ARB 22-035 be brought before the Board jointly in one hearing.

REASONS ON PRELIMINARY DECISION NO. 3

[22] As the Complainant noted, the information and evidence for both ARB 22-034 and ARB 22-035 are comparable and holding one hearing would not disadvantage either party and would be more time effective.

[23] It is so ordered.

Issue No. 4

[24] The Complainant noted that in the Respondent's Sur-Rebuttal for file number ARB 22-034, in the last paragraph on page 2, the amount of \$9,400,000 for the potential increase to the assessed value is excessive and would like the figure changed.

Position of the Complainant

[25] The Complainant noted that the original assessed value of that parcel of land is only \$1,599,970 for 3.144 acres so increasing the value to \$9,400,000 would be incorrect.

Position of the Respondent

[26] The Respondent noted that the amounts listed were for illustrative purposes only and should be calculated on the correct number of acres for that parcel of land.

PRELIMINARY DECISION NO. 4

[27] It is the decision of the Local Assessment Review Board to not change the amounts per acreage and the potential assessed value.

REASONS ON PRELIMINARY DECISION NO. 4

[28] Both Parties will be given the opportunity to speak to the correct acreage and potential assessed value during the merit portion of the Hearing.

[29] It is so ordered.

Issue No. 5

[30] The Complainant requested that the Respondent's Sur-Rebuttal Reference document not be accepted as it is new evidence.

Position of the Complainant

[31] The Complainant noted that the Colliers International Appraisal Report dated February 2019 provided in the Respondent's Sur-Rebuttal is new evidence as it has not been referenced in any other evidence from either the Complainant or the Respondent.

Position of the Respondent

[32] The Respondent indicated that the Complainant made reference to the Colliers International Appraisal Report in the purchase price listed Appendix 4 of their Disclosure. It was noted that the Appraisal Report is what informed the amount paid per acre to the Complainant by the Regional Municipality of Wood Buffalo for the utility right of way.

PRELIMINARY DECISION NO. 5

[33] It is the decision of the Local Assessment Review Board to not accept the Respondent's Sur-Rebuttal Reference document, which is the Colliers International Appraisal Report for the subject lands.

REASONS ON PRELIMINARY DECISION NO. 5

[34] The Respondent's Sur-Rebuttal Reference document was not accepted as it is considered new evidence as it was not referenced in either the Complainant's Disclosure or the Respondent's Disclosure.

[35] It is so ordered.

ISSUES

Issue identified on the complaint form	Assessment Amount	Requested Value
An Assessment Amount	\$7,638,280	\$4,174,039.12

MERIT MATTERS

Position of the Complainant

[36] For ARB File No. 22-035, Roll No. 71099060, the Complaint Form was entered as an exhibit as Complainant Disclosure C-4. A second eight-page disclosure document with the merit disclosure information was entered as an exhibit as Complainant Disclosure C-5, and a five-page rebuttal document was entered as an exhibit as Complainant Disclosure C-6.

[37] The Complainant submitted that the assessed value does not accurately represent the market value of the subject property.

[38] The Complainant submitted that the Regional Municipality of Wood Buffalo (Municipality) paid \$241,051 per acre for the utility right of way (ROW) to construct a berm for flood mitigation on the adjacent property legally described as Plan 0824071, Block 3, Lot 1, Roll No. 71099060 owned by the Complainant, as evidenced by an excerpt from the Purchase Agreement. (Exhibit C-5). The Complainant noted that to his understanding, due to the urgency to construct the flood mitigation berm in that area, both parties agreed to the ROW purchase agreement to avoid the potentially lengthy process of expropriation.

[39] The Complainant advised that the ROW is registered on the property title and cannot be removed without the agreement of both the property owner and the Municipality.

[40] The Complainant further advised that the lands subject to the ROW are not usable or developable as construction of any type would not be permitted on the berm or on the river side of the berm, which means they have no value to the Complainant.

[41] The Complainant also submitted that the Municipality purchased undeveloped and unserviced land, legally described as McMurray Plan; River Lots 23 and 24, which is adjacent to the subject lands, for the price of \$115,000 per acre. The Complainant noted that the estimated cost to service this land would be approximately \$150,000 per acre, bringing the total value to \$265,000 per acre for a comparable parcel of land to that owned by the Complainant. (Exhibit C-5)

[42] The Complainant provided an analysis of the Respondent's Comparable Sales Data for two properties in Exhibits R-5 and R-6. (Exhibit C-6:

- a) 10110 MacDonald Avenue: This property, located in downtown Fort McMurray, is not comparable to the subject property as it is zoned CBD1 – Central Business District compared to the LBL-R4 (residential) of the subject property, which demands a significantly higher per acre valuation due to its revenue potential. The Complainant provides the opinion that the high sale price is not an accurate or appropriate comparable property for the direct sales approach of the mass appraisal as this high value per acre would be an outlier in any regression analysis statistical testing.
- b) 8124 Franklin Avenue: This property, located on Franklin Avenue in downtown Fort McMurray, is not comparable as it has a superior zoning (FRA1- Franklin Core) to the subject property and is not subdivided which incurs additional costs that should be reflected in a negative adjustment and lower assessed value.

[43] The Complainant was questioned on the information provided in Complainant disclosure documents.

- a) The Complainant confirmed that there was no land title evidence included in the Complainant's disclosure for the properties described as McMurray Plan; River Lots 23 and 24.
- b) The Complainant also confirmed that title of the adjacent property legally described as Plan 0824071, Block 3, Lot 1, Roll No. 71099060 was not transferred to the Municipality and that there is a registered utility ROW on that property.

- c) The Complainant confirmed that both subject properties are fully serviced and ready for development, noting that they would still require a substantial investment prior to constructing any buildings.
- d) The Complainant indicated that it is his understanding that the Municipality would be responsible for all maintenance of the flood mitigation berm being built on the ROW and that the subject properties would benefit from the flood mitigation provided by the berm as would all of downtown Fort McMurray.
- e) The Complainant noted that the Complainant's disclosure only contained the excerpted Purchase Price per acre of \$241,051 per acre from the Purchase Agreement for the ROW as he was unable to get approval in time to include the entire Agreement in their disclosure before the disclosure deadline.

[44] The Complainant requested that the assessed value of the subject property be reduced to \$4,174,039, based on the value of \$241,051 per acre for the 17.316 acres of developable land negotiated and agreed to with the Municipality for the utility right of way located on the subject property, which is the most recent, relevant, and appropriate value to assess the subject property. The 21.09 acres of undevelopable land should be reduced from \$16,688 per acre to \$0.00 per acre as it cannot be developed with the ROW registered on that land title. (Exhibit C-5)

Position of the Respondent

[45] For ARB File No. 22-035, Roll No. 71099060, The Respondent provided a 28-page merit disclosure document which was entered as an exhibit as Respondent Disclosure R-5, and a 3-page rebuttal document was entered as an exhibit as Respondent Disclosure R-6. The exhibits entered as Respondent Disclosure R-2 (its Law and Legislation Brief) and as Respondent Disclosure R-3 (*Matters Relating to Assessment And Taxation Regulation, 2018*), pertain to both ARB No. 22-034 and ARB No. 22-035 files.

[46] The Respondent submitted that for vacant multi-residential property, such as the subject property, the assessment is determined using the direct sales approach and that Provincial legislation requires municipalities to prepare assessments that represent market value by application of the mass appraisal process. (Exhibit R-5)

[47] The Respondent presented that the subject property, legally described as Plan 0824071, Block 3, Lot 1, is in the Longboat Landing neighbourhood of Fort McMurray. The property consists of 39.22 acres of multi-residential land districted LBLR4 with a land use code 912 (undeveloped multi-residential land). A portion of the subject land is mostly cleared and ready for development with roads and services in place. (Exhibit R-5)

[48] The Respondent also presented that the subject property has 17.315 acres of developable area that the Assessment Department valued at \$420,000 per acre. The subject property also has 21.09 acres of undevelopable area that the Assessment Department has valued at \$16,688 per acre and includes a flood adjustment applied to the assessed value. (Exhibit R-5)

[49] The Respondent submitted as evidence the land title transactions for comparable land sales for vacant developable land in Fort McMurray, which occurred between April 2018 and Jun 2021. The comparable land sales had a value range of \$641,284 per acre at the low end and \$3,333,333 per acre at the high end. The subject property has 17.316 acres of developable area that is being valued at \$420,000 per acre, which is below the low range of the comparable sales data. (Exhibit R-5)

[50] The Respondent provided that the purchase of the ROW by the Municipality cannot be used to establish market value as it was not a sale on the open market but rather a negotiated price between the parties for the use of the land and not the purchase of the land within the subject property.

[51] The Respondent submitted that the comparable land sales provided by the Complainant for unserviced and undeveloped land at McMurray Plan; River Lots 23 and 24, which are valued at \$115,000 per acre, do not establish a market value as these 2 parcels were purchased directly by the Municipality and were never for sale on the open market. The Respondent noted that these land sales were not supported by any evidence, such as land title transactions, which was confirmed by the Complainant.

[52] The Respondent also submitted that the subject property has 21.09 acres of undeveloped area and is being valued at \$16,688 per acre, which is well below the price per acre of the comparables provided by the Complainant for the unserviced and undeveloped land at McMurray Plan; River Lots 23 and 24.

[53] The Respondent further submitted that McMurray Plan; River Lots 23 and 24 are not comparable to the subject properties as these two parcels are districted as DC (Direct Control), which is subject to Council's approval of development permits and controls,

and this may limit future development of these 2 parcels. The subject property would not be required to follow the same development process. (Exhibit R-5)

[54] The Respondent requested that the Local Assessment Review Board confirm the assessed value of the subject property at \$7,638,280.

[55] In closing, the Respondent offered that the subject property is assessed using the Direct Sales Approach and that the examination of the calculated land values for the subject property demonstrate a fair and equitable property assessment. The onus is on the Complainant to provide compelling evidence on which a revised assessment is based.

[56] In his closing statement, the Complainant reiterated his request that the developable lands on the subject property be assessed at \$241,051 per acre based on the price per acre for the ROW negotiated with the Municipality and that the undevelopable lands within the ROW be assessed for \$0.00 per acre.

DECISION

[57] It is the Decision of the Local Assessment Review Board to confirm the assessment in the amount of \$7,638,280.

REASON FOR DECISION

[58] The Board determined that the issue before them is whether the assessed value of the subject property is correct.

[59] The Board accepted as evidence the Respondent's submission of the comparable sales of 10110 MacDonald Avenue and 8124 Franklin Avenue as this sales data was supported by the land titles transactions. The Board noted that the comparable properties were not districted the same as the subject property; however, they are similar in that they are vacant serviced land located in the downtown area of Fort McMurray and are assessed higher per acre than the subject property.

[60] The Board could not place any weight on the data provided by the Complainant that the Municipality purchased the utility right of way (ROW) on the property legal described as Plan 0824071, Block 3, Lot 1, Roll No. 71099060 as the only evidence to support the price per acre was an excerpted clause from the Purchase Agreement. This does not constitute evidence of an arms-length land sale as title did not change and the Complainant noted that the price negotiated for the ROW was to expediate the process and avoid expropriation of the land.

[61] The Board could not place any weight on the sales data provided by the Complainant for the adjacent lots of McMurray Plan; River Lots 23 and 24 as there was no supporting evidence that these sales were arm's-length nor were the land titles transactions provided for these properties.

[62] The Board noted that both parties agreed that the subject property is comprised of 17.316 acres of serviced, developable area and 21.09 acres of undevelopable area that is within the utility ROW for the flood mitigation berm as well as the land located outside the ROW adjacent to the river. There was no evidence presented by the Complainant to support the reduced assessed value for the serviced, developable area nor to support a nil assessed value for the undevelopable area within the ROW. The onus is on the Complainant to provide the evidence to support their case, and failing to do so, does not mean that the onus is transferred to the Respondent.

[63] Although the Respondent provided no evidence of how the flood adjustment was applied to the undevelopable area of the subject property, the Board accepted that there was a significant adjustment made to reduce the price per acre to \$16,688 and noted that the land has some value as a flood mitigation measure for the subject property and adjacent properties, so the Board did not accept the Complainant's request that the undevelopable land has no value and should be assessed at \$0.00 per acre.

[64] In coming to its conclusion, the Board has carefully reviewed 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").

[65] It is so ordered.

DISSENTING OPINION

[66] There was no dissenting opinion.

[67] 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 King'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 18th day of November, 2022.

FOIP s17(1)

Alex McKenzie, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE LARB

Exhibit Number	Description
C-4	ARB 22-035 Complaint Form (3 pages)
C-5	ARB 22-035 Complaint Disclosure (8 pages)
C-6	ARB 22-035 Complainant Rebuttal (5 pages)
R-2	RMWB Law and Legislation Brief (58 pages)
R-3	Matters Relating to Assessment and Taxation Regulation 2018 (32 pages)
R-5	ARB 22-035 Respondent Disclosure (28 pages)
R-6	ARB 22-035 Respondent Sur-Rebuttal (3 pages)

APPENDIX B

REPRESENTATIONS

Person Appearing	Capacity
P. Musil	Clearwater Village Properties
J. Peyton	Supervisor, Regional Municipality of Wood Buffalo
D. Robichaud	Assessor, Regional Municipality of Wood Buffalo

APPENDIX C

LEGISLATIVE AUTHORITIES CONSIDERED BY THE BOARD

Municipal Government Act, R.S.A. 2000, Chapter M-26 (the MGA)

s 1(1)(n) 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;

s 289(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, and
- (b) the valuation and other standards set out in the regulations for that property.

s 460.1(1) A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

- (a) an assessment notice for
 - (i) residential property with 3 or fewer dwelling units, or
 - (ii) farm land

s. 460.1(2) Subject to section 460(14), a composite assessment review board has jurisdiction to hear complaints about

- (a) any matter referred to in section 460(5) that is shown on
 - (i) an assessment notice for property other than property described in subsection (1)(a)

s. 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.

(1.1) For greater certainty, the power to make a change under subsection (1) includes the power to increase or decrease an assessed value shown on an assessment roll or tax roll.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(9).

(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,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

Matters Relating to Assessment and Taxation Regulation, 2018, AR 203/2017 (MRAT)

- s. 5** An assessment of property based on market value
- (a) must be prepared using mass appraisal
 - (b) must be an estimate of the value of the fee simple estate in the property, and
 - (c) must reflect typical market conditions for properties similar to that property.
- s. 6** Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.
- s. 7(1)** The valuation standard for a parcel of land is
- (a) market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Matters Relating to Assessment Complaints Regulation, 2018, AR 201/2017 (MRAC)

- s. 19(1)** Parties to a hearing before a panel of an assessment review board may attend the hearing in person or may, instead of attending in person, file a written presentation with the clerk.