EDMONTON
Assessment Review Board

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Edmonton Composite Assessment Review Board

Citation: Focus Equities Alberta Inc. v The City of Edmonton, 2012 ECARB 2372

Assessment Roll Number:	10233274 & 10233276
Municipal Address:	2845 & 2807 Aurum Road NE
Assessment Year:	2012
Assessment Type:	Annual Revised

Between:

Focus Equities Alberta Inc.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
James Fleming, Presiding Officer
James Wall, Board Member

Preliminary and Procedural Matters

[1] Legal counsel for the Complainant objected to Board Member, Brian Hetherington, hearing this matter as they had both represented parties involved in a legal matter, wholly unrelated to the hearing, a few years prior. The Respondent indicated that they had no objection to the composition of the Board.

[2] After a brief recess, Mr. Hetherington advised the parties that he had had struggled to ascertain to what matter the Complainant's legal counsel was referring. Upon clarification, the Mr. Hetherington indicated that he was not concerned that their previous dealings would influence his hearing this matter, however, he would be willing to recuse himself should the Complainant's counsel maintain her objection.

[3] As Complainant's counsel maintained her objection, Mr. Hetherington recused himself, and the hearing proceeded with the remaining two Board Members.

[4] With the approval of both parties, the rolls 10233276 and 10233274, (which are adjacent properties scheduled on the same agenda and have identical issues) were heard together, and the decisions are contained in one document.

Background

[5] The properties are two contiguous lots of vacant land for development located in the northeast quadrant of the City. The two properties comprise approximately 10.37 hectares (ha.) on one lot and 7.95 ha. on the other. The properties are currently zoned IM, and they are valued using the direct sales comparison approach (DSC).

[6] During the hearing it emerged that the map prepared by Stantec and included in the Complainant's lease evidence (Schedule A) had the incorrect identification for the lots of the subject properties. It was agreed that lots 1, 2, and 3 were actually lots 2, 3 and 6 respectively, and these designations were used throughout the remainder of the hearing and in this decision.

Issue

[7] The only issue identified by the Complainant was whether the subject properties met the qualifications to be classed as farmland.

Legislation

[8] The Municipal Government Act reads:

> ***Municipal Government Act*, RSA 2000, c M-26**
>
> s 1(1)(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 propert on December 31 of the year prior to the year in which a tax is imposed under part 10 in respect of the property

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.

s 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,

b) the procedures set out in the regulations, and

c) the assessments of similar property or businesses in the same municipality.

[9] The legislative provisions relating to agricultural land assessments are contained at:

***Matters Relating to Assessment and Taxation Regulation*, Alta. Reg. 220/2004 [MRAT]**

s 1(b) "agricultural use value" means the value of a parcel of land based exclusively on its use for farming operations;

s 1(i) "farming operations" means the raising, production and sale of agricultural products and includes

(i) horticulture, aviculture, apiculture and aquaculture,

(ii) the production of horses, cattle, bison, sheep, swine, goats, fur-bearing animals raised in captivity, domestic cervids within the meaning of the *Livestock Industry Diversification Act*, and domestic camelids, and

(iii) the planting, growing and sale of sod;

s 4(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.

s 4(3) Despite subsection (1)(b), the valuation standard for the following property is market value:

(c) an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;

(d) an area of 3 acres that

(i) is located within a parcel of land, and

(ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(e) any area that

(i) is located within a parcel of land,

(ii) is used for commercial or industrial purposes, and

(iii) cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(f) an area of 3 acres or more that

(i) is located within a parcel of land,

(ii) is used for commercial or industrial purposes, and

(iii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.

s 4(4) An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.

Position of the Complainant

[10] The Complainant advised that there was only one issue to be decided, and that was whether the properties should be classed as farmland for the 2012 tax year. They advised that the properties had been classed as farmland prior to the 2012 tax year and that they were again classed as farmland for the 2012 assessment year. In 2011, the tenant who leased the properties had opted to allow the orphan seeds on the properties to form the basis of the crop for that year. When it came time to harvest the crop, the tenant felt it to be uneconomical to harvest and left the crop standing.

[11] The Complainant agreed that factually nothing had been done to the properties during the 2011 calendar year, but disputed that no farming had taken place. The Complainant provided copies of leases, which included the subject properties for both 2011 and 2012, and advised that the full lease payments had been made in both years. They also advised that the total rent for the subjects amounted to around $10,000, which they argued was a meaningful rent.

[12] Insofar as the motive for the tenant's decision on the manner of "using the land" in 2011, the Complainant indicated that, due to access issues to the subject properties caused by construction on adjacent properties, the tenant had decided to allow the "orphan seeds" left on the properties from previous plantings to grow, to determine if the lands could produce an economical crop from that method. They also included a letter to that effect from the tenant (Ex. C1, Tab 5). At the end of the season a combination of factors convinced the tenant that it would be uneconomical to harvest the crop.

[13] The Complainant reviewed the legislation surrounding the determination of farmland. They highlighted section 1(i) of MRAT which defines "farming operations" and argued that orphan seed farming constituted "farming operations."

[14] Further, they reviewed an Edmonton CARB decision (0098 618/11) which they argued supported their case. This case determined that "all three conditions" were not necessary for a finding that farming operations took place (Exhibit C-1, tab 6, pg. 6, para. 7). They also urged the CARB to consider that, like the cited CARB decision, there was no evidence that the properties were used for anything else (Exhibit C-1, tab 6, pg. 6, para, 7). In support, they noted the fact that there was

1. a farming lease in effect with a rent that had been paid,
2. no stripping and grading done on the lands; and
3. no development permits taken out or applied for on the subject properties.

The Complainant stated that all of these facts should provide strong support to classify the properties as farmland.

[15] Accordingly, the Complainant asked for a reduction in the assessment as noted in the table below.

Roll Number	Municipal Address	Requested Assessment	Current Assessment
10233274	2845 Aurum Rd.	$735,500	$5,029,000
10233276	2807 Aurum Rd.	$733,500	$4,285,500

Position of the Respondent

[16] The Respondent argued that no farming had taken place on the subject properties during the assessment year. As part of the proof for this assertion, the Respondent showed pictures of the properties taken on December 30th 2011, one day before the condition date. These pictures demonstrated that nothing had been taken off the land.

[17] The Respondent's argument was that nothing was done to the lands during the assessment year. There was no tilling, preparation, seeding or harvesting done on the properties. On this basis, the Respondent said there were no farming operations on the properties. The Respondent contended that something had to be done to the land sometime during the year for there to be "farming operations".

[18] The Respondent highlighted a number of decisions from various Assessment Review Boards to support their position. With respect to the Complainant's tab 6 in Exhibit C-1, they noted that the land was contemplated to be used for summer fallow, generally acknowledged as a

legitimate farming operation. Therefore, they argued the issue in that decision was not similar to the issue argued for the subject properties.

[19] The City also noted that, while hearsay evidence is permissible in CARB hearings, they would have appreciated the opportunity to question the tenant on his actions and intent with respect to the subject properties in 2011. Without this opportunity, it was difficult to discern the true context and intent of the parties with respect to the subject lands.

[20] The City reviewed Edmonton CARB Decision No. 0098 928/11 (at Exhibit R-1, pg. 59) and noted that in that case, the Board stated that the lease was not conclusive proof that the subject was farmed. The City argued that the same premise could be applied to this case.

[21] Also reviewed was a City of Calgary CARB decision, 2895/2011-P, which the City suggested held that a "reasonable expectation" for the "raising production and sale of agricultural products" was a necessary requirement for a property to be classified as a "farming operation." The Respondent concluded that in the present case there was no reasonable expectation of a crop and therefore no farming operations took place.

[22] They concluded by requesting confirmation of the assessment.

Complainant's Rebuttal

[23] The rebuttal concerned a witness statement of a discussion between the City Assessor and the Complainant's representative.

Decision

[24] The Complaint is allowed, and the assessment is reduced as noted below:

Roll Number	Municipal Address	Revised 2012 Assessment
10233274	2845 Aurum Rd.	$735,500
10233276	2807 Aurum Rd.	$733,500

Reasons for the Decision

[25] The CARB considered all of the evidence and the argument. The CARB notes that the assessment values are not at issue in these complaints. What is at issue is whether the property

should be assessed as farmland and receive the discounted regulated assessment value. In order to determine whether the properties should be assessed as farmland, the Board must determine whether orphan seed farming falls within the definition of "farming operations" in MRAT. If it does, then the assessment should be reduced to the regulated farmland assessment for all but three acres of each property, with those three acres being assessed at market value in accordance with the regulations.

[26] The CARB noted that neither party produced very much information on the critical issue of whether orphan seed farming constitutes "farming operations" within MRAT. The Complainant stated that the land was farmed. By inference, if not direct statement, they felt orphan seed farming constituted "farming operations". In addition, the tenant clearly felt that orphan seed farming was a "farming operation". The support for that was (1) in the letter from the farmer (Ex. C1, Tab 5) wherein he stated he was pursuing orphan seed farming (2) the lease for the lands and the testimony that the rent (around $10,000) was paid for the land in 2011 and (3) no non-farming activities were carried out on the land in 2011by any parties. There were no changes to the land: no stripping or grading was done, nor were development permits applied for or issued for the subject.

[27] In the Complainant's testimony, they advised that among the reasons for the tenant pursuing orphan seed farming in 2011 was because land adjacent to the subject was under construction, limiting the access to the subjects. At the end of the season, the tenant determined that harvesting from the subject would be uneconomical. The Board finds this testimony evidences a reasonable underlying rationale for the tenant's conduct. Further, the Board finds that the tenant's conduct led to a reasonable expectation for the "raising, production and sale" of a crop, pursuant to the definition of "farming operations" in MRAT.

[28] The actions of the tenant noted above, the lack of any move to develop the land, and the reasons the tenant provided for pursuing the orphan seed program all seem reasonable to the CARB. The Respondent provided little evidence to challenge the concept of orphan seed farming. Under questioning, the Respondent advised that orphan seed farming was not a "typical" farming practice, but provided no evidence to support that contention.

[29] The CARB agrees with the finding in CARB 0098 618/11 (page 6 para. 7) that there is no compulsory or mandatory direction in MRAT that all three activities in the definition of "farming operations", namely, "raising, production and sale", must be met. The CARB agrees such an interpretation would lead to excessive exclusions for what are inarguably legitimate farming activities.

[30] The CARB is very much persuaded by the specific facts in this complaint. While the Respondent argues that nothing was done to the land all year and disputes that "farming operations" have taken place, the CARB is persuaded by the existence of the lease, and the fact that rent was paid for 2011 and 2012. Though post facto, the CARB notes that the farming use was re-instituted by the City for the 2012 assessment year. In addition, the CARB was further persuaded by the explanations from the Complainant and the tenant as to why the tenant chose orphan seed farming. Finally, the CARB was further convinced of the Complainant's arguments because nothing changed on the land from 2010 to 2011.

[31] The CARB concludes that the Respondent failed to adequately meet the Complainant's significant challenge this year, and so the CARB finds that the lands were used for "farming operations" within the meaning of MRAT and reduces the assessment to the requested amount.

Dissenting Opinion

[32] There was no dissenting opinion.

Heard September 19, 2012.
Dated this 15 day of October, 2012, at the City of Edmonton, Alberta.

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James Fleming, Presiding Officer

Appearances:

Janice A. Agrios,Q.C., Kennedy Agrios LLP
Michael Mooney, Focus Equities Alberta Inc.
for the Complainant

Darren Nagy, Assessor
Steve Lutes, Legal Counsel
for the Respondent

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.