

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Assessment Review Board (CARB) pursuant to the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the *Act*)

BETWEEN:

E. J. W. Adkins and J. D. Adkins – Complainant

- and -

Town of Okotoks – Respondent

BEFORE:

H. Kim, Presiding Officer
D. Mullen, Panel Member
D. Onerheim, Panel Member

This is a complaint to the Town of Okotoks Composite Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of the Town of Okotoks as follows:

Roll Number	Address	Assessment
1726051	354074 48 Street East	\$1,377,000

This complaint was heard on the 14th day of July 2020 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Brenda MacFarland Property Tax Consulting
 - N. Laird, Agent
 - E. J. W. Adkins, land owner

Appearing on behalf of the Respondent:

- Town of Okotoks
 - D. Genereux, Assessor

Attending for the Assessment Review Board:

- P. Huber, Clerk

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Procedural Matters

- [1] The subject property and the adjacent property to the south are owned by the same land owner and were scheduled for two separate hearings. The Complainant requested they be heard together, and provided disclosure and rebuttal for both properties in consolidated documents. The Respondent had provided separate disclosure documents, but agreed to have the two complaints proceed as one hearing. With the agreement of the parties, the Board proceeded with one hearing but determined that a decision would be issued separately for each complaint.
- [2] The two properties were the subject of complaints in 2019. They were heard on September 12, 2019 and the decisions for both complaints were to confirm the assessment. At the outset of the hearing, the Complainant noted that the composition of the panel in the subject hearing was identical to that in the 2019 hearing, and this gave him pause. It was noted by the Assessment Review Board clerk that it was only by chance that the same members had been assigned, and, upon questioning, the Complainant stated that he was not objecting to the composition of the panel. The hearing proceeded without further submission on this matter.

Property Description and Background

- [3] The subject property is a rectangular 9.98 acre parcel near the east boundary of the Town, which was annexed into the Town from the Municipal District of Foothills, now renamed Foothills County (County) on July 1, 2017 by Order in Council OC199/2017 (OC) which stated:
 - 5(1) For the purpose of taxation in 2018 and subsequent years, the assessor for the Town of Okotoks must assess the annexed land and the assessable improvements to it.
 - (2) For the purpose of taxation in 2018 and in each subsequent year up to and including 2046, the annexed land and assessable improvements to it, other than linear property,
 - (a) must be assessed by the Town of Okotoks on the same basis as if they had remained in the Municipal District of Foothills, No. 31, and
 - (b) must be taxed by the Town of Okotoks in respect of each assessment class that applies to the annexed land and the assessable improvements to it using
 - (i) the tax rate established by the Municipal District of Foothills, No. 31, or
 - (ii) the tax rate established by the Town of Okotoks,whichever is lower, for property of the same assessment class.

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The OC had provision for circumstances under which Section 5(2) would cease to apply prior to 2046, none of which apply for the subject property.

- [4] The parcel is unserviced and districted Country Residential (CR) under the Town's Land Use Bylaw. It has a residence with garage, Quonset, barn, and greenhouse, along with part of a fenced and gravelled RV storage lot which straddles the subject parcel and the adjacent parcel to the south, which is also owned by the Complainant. The 2019 assessment, which was confirmed by the Board in CARB 0238/02/2019, was based on the cost approach to value for the improvements (which are not under complaint), with the residential and non-residential portions of the land assessed at market value, and the farm land assessed at the regulated rate prescribed by the *Alberta Farm Land Assessment Minister's Guidelines* as follows:

Residential Land (acres)	2.75	182,820
Vacant farm land	1.98	490
Non-residential land with 203 RV stalls	5.25	<u>648,180</u>
Total land	9.98	831,490
Improvements		<u>221,000</u>
2019 Assessment		1,052,490

- [5] The subject 2020 assessment is also based on the cost approach in the same manner as for the 2019 assessment, but the areas for the various uses were re-measured by the assessor, using the imagery services measurement program of Pictometry Canada Corp. The measurements showed the farm area is less than 1.0 acre and it was assessed at market value.

The 2020 assessment under complaint is calculated as follows:

Residential Land (acres)	2.85	285,000
Vacant farm land @ \$100,000 per acre	0.82	82,000
Non-residential land with 203 RV stalls @ \$125,000 per acre	6.31	<u>788,750</u>
Total land	9.98	1,155,750
Improvements		<u>221,000</u>
Assessment		1,376,750

Issues

- [6] The Complaint form identified a number of reasons for complaint, but at the hearing and in disclosure, the following issues were argued:
1. The assessment is not prepared in accordance with OC 199/2017.
 2. The areas used in the calculation of the land assessment are incorrect.
 3. The non-residential land rate is unfair and inequitable.

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Requested Assessment

- [7] The only portions of the assessment under dispute are the sizes assigned to the various uses and the land rate for the RV storage portion of the parcel. The requested assessment is based on \$50,000 per acre as follows:

Residential Land (acres)	3.0 ac @ 100,000	300,000
Vacant farm land	1.98	490
	5.0 ac @ 50,000 per	
RV Storage land	acre	250,000
Improvements		221,000
Requested Assessment		771,490

Issue 1: Assessment per OC 199/2017

Complainant's Position

- [8] The Complainant submitted assessment notices from the County and the Town from 2015 to 2020, and noted that in 2017, the final year in which the subject property was assessed by the County, the total assessment was \$753,580 compared to the current assessment of \$1,376,750. OC 199/2017 states that the annexed property must be assessed by the Town on the same basis as if they had remained in the County. There have been no physical or legal changes since annexation; therefore, this requirement still applies. Based on the significant increase to the property's assessment since annexation, it would be expected that there would have been corresponding increases to the assessments of similar properties in the County, but such an increase has not occurred.
- [9] The changes to the assessment for 2020 renders the assessment not to be on the same basis as if the properties had remained in the County: the land areas for the components have been altered, and the base rate for the non-residential land component is much higher than what is assessed for similar properties in the County. The Respondent has access to the relevant assessment records from the County, and the assessment was not prepared on the same basis as if it had remained in the County.

Respondent's Position

- [10] The Respondent agreed that OC 199/2017 applies and that there have been no physical or legal changes since annexation, but argues that the OC does not direct the Town to perpetuate errors, prepare assessments in conflict with legislation or regulations, or apply rates from areas without strong urban influence. The OC also does not instruct that valuation rates are to remain the same.

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- [11] The location of many annexed areas benefit from strong urban influence, which should be reflected in the valuation. Sales in the County in locations close to the Town, such as residential land in the Tiki Ranch Place area and non-residential land in the Warner area are monitored, to establish market value. The assessment was completed in compliance with all applicable statutes and regulations on the same basis as if it had remained in the County.

Decision on Issue 1

- [12] The OC does not require that errors that may have been in the County's assessment be perpetuated by the Town, and the assessment of non-farmland should be based on the market value of similar parcels in the County.

Reasons

- [13] The assessment is prepared annually, and a large increase in the assessment by the Town when such increase was not noted among similar properties in the County does not necessarily indicate that the assessment was not prepared in accordance with the OC. The Board agrees that the OC does not mandate that errors in the assessment prepared by the County, if such errors exist, must be perpetuated. The Board also agrees that sales of similar property in the County close to the Town are appropriate to determine the residential and non-residential land values.
- [14] Nevertheless, as determined in the decision on Issues 2 and 3, the Board finds that the assessment was not prepared in accordance with the OC and the applicable regulations.

Issue 2: Calculation of Land Areas

Complainant's Position

- [15] Prior to annexation the County assessed the subject land on the following basis, which was also used by the Town until the 2020 tax year:

Residential (acres)	3
Non-residential	5
Farmland	1.98
Total	9.98

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For tax year 2020, the Respondent used the following land areas:

Residential (acres)	2.85
Non-residential	6.31
Farmland	0.82
Total	9.98

- [16] The 2020 land areas were based on revised measurements, adding the area of the access road to the commercial use non-residential land at market value. There is no standard prescribed by the legislation to consider the road area access as non-residential. It is not the standard that was used to assess the property when it was located within the County, nor is it the standard in currently in use in the County. The property owner measured the actual RV lot areas and determined it was 4.80 acres, while the measurement tool from Google Maps, indicates an area of 4.88 acres, both of which fall within the 5.0 acre area permitted for RV storage by the County. The Complainant submitted the Council minutes from the County's June 11, 2014 meeting in which County Council considered Bylaw 32/2014 to expand the RV storage facility on the subject parcel on to the agricultural parcel to the south:

J. and J. Adkins were in attendance for the proposed Site Specific Amendment to the Land Use Bylaw to allow for a 15.0 +/- acre expansion to the existing 5.0 +/-acre RV storage facility to accommodate 750 additional units, including RV's, trailers, trucks, cars, motorcycles, and boats. The existing facility is contained within a 9.98 +/- acre Country Residential District parcel and the expansion would be contained within the adjacent 53.99 +/- acre Agricultural District parcel, both of which are owned by the applicant...

- [17] It is clear that the 5.0 acres assessed as non-residential by the County was based on the land area that had been approved for the RV storage use, and that this did not include the access road. The changes made by the Respondent do not correct an error; they impose a new and different assessment methodology not required by statute, even though nothing has changed regarding this property since annexation.
- [18] The Complainant submitted that for assessment purposes, the land areas for the various uses as assessed by the County prior to annexation are appropriate and in accordance with the legislation, and should be maintained.

Respondent's Position

- [19] The Respondent stated the land areas were re-measured to reflect actual areas in use, as there is no direction in the OC to perpetuate errors in size allocations. All properties in Alberta are assessed in accordance with the legislation which generally applies a market value standard. If land is used for farming operations, the regulated

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farm land rate is applied. Alberta Regulation 203/2017 *Matters Relating to Assessment and Taxation Regulation*, 2018 (*MRAT*) is clear with respect to the determination of land used for farming operations:

2(1)(f) “farming operations” means the raising, production and sale of agricultural products and includes ...

- [20] *MRAT* sets out the basis on which land used for farming operations is to be assessed, and excludes 3 acres of land used for residential purposes and any land used for commercial or industrial purposes. The definition of farming operations does not include roadways, and the Respondent submitted that roadways required to provide access to a commercial use is clearly also land used for commercial purposes, and that it should be assessed at market value.
- [21] The residential area was measured as 2.85 acres using the imagery services measurement program of Pictometry Canada Corp. The area was drawn along the south side of the north roadway which provides access to the RV storage located on the subject parcel and the parcel to the south, as the area of the roadway is commercial use. The area of residential land was based on the location of the buildings with an allocation of amenity space to the south of the residential access road in an amount that is typical for an acreage parcel. The Respondent disputed that *MRAT* directs that an automatic 3 acres be removed from the farm area even when the residential area is less than 3 acres. The Respondent highlighted section 7(3)(b) and stated that the provision is that a maximum up to 3 acres can be valued at market value rather than the farm land value. *MRAT* does not instruct that land not used for residential purposes must be valued at a residential rate.
- [22] The farm land was the area between the residential and commercial accesses, measuring 0.82 acres. As it is less than 1 acre, it is assessed at market value in accordance with section 7(3)(a) of *MRAT*. The remaining area is 6.31 acres, and is area used for commercial or industrial purposes per section 7(3)(e) of *MRAT*, assessed at market value.
- [23] The Respondent submitted that the areas used by the County in the assessment prior to annexation were incorrect, and the error should not be perpetuated.

Decision on Issue 2

- [24] The land areas are not calculated in accordance with *MRAT* and the OC, and should be restored to the areas assessed by the County prior to annexation. Further, even if the farm land portion of the parcel were actually less than one acre, it should be assessed at the regulated farm land rate, not market value.

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Reasons

[25] *MRAT* states:

- 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.
- (2) In preparing an assessment for a parcel of land based on agricultural use value, the assessor must follow the procedures set out in the Alberta Farm Land Assessment Minister's Guidelines.
- (3) Despite subsection (1)(b), the valuation standard for the following property is market value:
 - (a) a parcel of land containing less than one acre;
 - (b) a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
 - (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.
- (4) An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.

[26] The Respondent is incorrect in assessing the 0.82 acre portion of the parcel identified as farm land at market value. Section 7(3)(a) applies to a parcel of land containing less than one acre, and section 7(4) does not apply to 7(3)(a) and (b). Therefore, even if the area of 0.82 acres of farm land identified on the subject parcel were the correct amount, *MRAT* requires it to be assessed at the regulated farm land rate.

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- [27] Similarly, the Respondent is incorrect in stating that *MRAT* does not direct that an automatic 3 acres be removed from the farm area even if the residential area is less than 3 acres. Section 7(3)(b) applies to a parcel of land containing up to 3 acres. *MRAT* in fact does direct that an automatic 3 acres of the 9.98 acre subject parcel be assessed as residential at market value.
- [28] The Board finds that the areas were not measured correctly in accordance with *MRAT* and the OC. *MRAT* section 7(3)(c) requires that an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used for residential purposes must be assessed at market value. This does not require an exercise in identifying areas used for residential purposes, it requires 3 acres of the parcel to be assessed as residential, not the 2.85 acres measured by the Respondent.
- [29] The land owner testified that the land on both sides of the residential access driveway is used for hay, and this is supported by the crop lines visible on the photographs. The southwest portion of the parcel identified by the Respondent as amenity space for the residence is land used for farming operations. Under those circumstances, and in view of the evidence that the land use bylaw only permitted 5.0 +/- acres on the subject parcel to be used for RV storage, Board is of the opinion that the County included the area of land used to access the RV storage in the 3 acres required to be assessed at residential market value. The Board does not consider this to be an error, but an interpretation of the direction in *MRAT* and an indication of assessment practice within a municipality, which, as long as it is applied consistently among similar properties, is reasonable.
- [30] The OC required the Town to assess the subject property on the same basis as if it had remained in the County. Both parties agree there have been no changes to the subject property since annexation. Accordingly, the assessment should reflect the land areas in the manner determined by the County's practice, and be restored to the areas assessed prior to annexation.

Issue 3: Land Rate

Complainant's Position

- [31] The Complaint provided assessments for five (5) RV storage parcels in the County, numbered F1 to F5, and one in the Town, O1. The Complainant was unable to obtain the assessed land areas, and used the measuring tool on Google Maps to estimate the RV lot sizes, and compared them to the non-residential portion of the assessment to arrive at the assessment per acre, which ranged from \$21,772 to \$52,925. The \$125,000 per acre rate applied to the subject parcel is inequitable with other RV storage property in the County.

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- [32] The best comparable is F1, Alberta South Storage, located 3 miles east of the subject on the west side of Highway 2. It has a total parcel area of 8.81 acres, and its land assessment consists of \$350 Farmland, \$113,990 Residential, and \$308,190 Commercial – Other. The Google Maps measurement tool indicated the area used for RV storage was 5.99 acres; therefore, the assessment per acre is \$51,441. Its total 2020 assessment, including improvements, was \$918,570. This property sold in October 2018 for \$2,350,000; however, this included farm land and the value of the business. The Complainant disputed the Respondent's position that this comparable should be dismissed due to the "strong urban influence" of the subject. There is no evidence that being closer to the Town would significantly increase the non-residential land value of the subject. The only non-residential, nonfarming use permitted on the subject is 5 acres of RV storage, which does not benefit from increased traffic and visibility.
- [33] The comparable property in the Town, O1, is also within the annexed area, and the Google Maps measurement of its RV lot 6.14 acres. Its non-residential land assessment is \$313,800 which is \$51,071 per acre. The Complainant argued that this is also inequitable, and further supports the requested \$50,000 per acre rate for the RV storage portion of the subject parcel.
- [34] The \$125,000 per acre rate for the RV storage land was carried forward from the decision in the 2019 complaint; however, different arguments and evidence were presented in that hearing. In the subject hearing, the change in value is based on establishing equity with other RV storage properties in the County and the Town.

Respondent's Position

- [35] The assessment was based on \$100,000 per acre for residential and \$125,000 per acre for the RV storage. The residential rates, not under complaint, were determined from sales of acreages in the County close to the Town. The evidence for the RV storage portion of the parcel was carried forward from the submission for the 2019 complaint, and was set at \$125,000 based on the decision in CARB 0238/02/2019 to confirm the assessment.
- [36] The Respondent agreed that the complainant's best comparisons were F1 and O1, but F1 is three miles away and does not have any of the strong urban influence of bordering the Town, as the subject did prior to annexation. O1 is a 108.94 acre parcel of mostly farm land, and the assessment data obtained from the County indicated 2.51 acres of RV storage, which was also assessed at \$125,000 per acre. The Respondent did not re-measure that parcel. The Respondent argued that it is only one comparison and should not be the basis on which to change the rate applied.

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Decision on Issue 3

- [37] The rate applied to the RV storage is inequitable with similar property in the County and should be set at \$64,000 per acre.

Reasons

- [38] The Board considered the impact of “urban influence” and determined that any RV storage business would require such influence, as RV owners on rural or acreage sites would have no need to store their RVs off site. Accordingly, for the purposes of determining the value of the RV storage land, the Board considered F1 to be very comparable to the subject. The subject is close to the Town, but F1 is located at Highway 2, and the Board was of the opinion that the characteristics would be offsetting.
- [39] The commercial land component of F1 was assessed at \$308,190. The Complainant could not ascertain the assessed area of RV storage land and based his requested land rate using Google Maps. The Board does not consider this to be reliable, and determined that it would be more reasonable to infer the land area from the statutory requirements: The farm land is assessed at \$350 which is the regulated rate for one acre, and *MRAT* requires three acres to be assessed as residential. This totals four acres, which, deducted from the parcel size of 8.81 acres leaves 4.81 acres of RV storage land, assessed at \$308,190 or \$64,072 per acre. The Board considered this to be the best evidence of RV storage rates used by the County for comparable property, and that the rounded value of \$64,000per acre would be appropriate for the value of the subject RV storage land. The Board notes that the Respondent could have obtained the actual land rates from the County pursuant to the OC.
- [40] With respect to equity with the land rate for the comparable RV storage property within the Town, the Board was of the opinion that if the RV storage area is in fact twice as large as the assessed area, it was likely an error. It is not reasonable to set the rate based on a single example, since the *Act* allows for the assessor to issue amended assessments within the tax year to correct errors.

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CARB's Decision

[41] For the reasons detailed above, the assessment is reduced to \$841,490 as follows:

Residential Land (acres)	3.0 ac @ 100,000	300,000
Vacant farm land	1.98	490
RV Storage land	5.0 ac @ 64,000 per acre	320,000
Improvements		<u>221,000</u>
Total Assessment		841,490

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta this 11th day of August 2020.



for

H. Kim
Presiding Officer

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APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure for subject and Roll #1726056
2. R2	Respondent Disclosure
3. C2	Complainant Rebuttal for subject and Roll #1726056

An application for Judicial Review may be made to the Court of Queen's Bench with respect to a decision of an assessment review board.

An application for Judicial Review must be filed with the Court of Queen's Bench and served not more than 60 days after the date of the decision, and notice of the application must be given to

- (a) the assessment review board*
- (b) the Complainant, other than an applicant for the judicial review*
- (c) an assessed person who is directly affected by the decision, other than the Complainant,*
- (d) the municipality, and*
- (e) the Minister.*